

Law Student Colloquium 2012

Law School
Trinity College Dublin

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A Note of Welcome from Trinity College Law School

I am delighted to take this opportunity as Head of the Law School at Trinity College, Dublin to welcome all participants to the fourth annual Trinity College Law Student Colloquium. The Colloquium, which has been a student initiative from the outset, brings together law students both undergraduate and postgraduate from Ireland and elsewhere to present papers on a wide variety of legal topics. It provides a great opportunity for law students to develop their presentational skills and to explore legal issues of interest to them. The School wishes to extend its thanks to Mr Paul Gallagher SC for agreeing to chair the Colloquium and to William Fry and Allen & Overy for kindly sponsoring the event. We are also delighted that Mr Justice Bryan McMahon has agreed to give the first annual Brian Lenihan Memorial Lecture. We have all been very proud of the success of the Colloquium in previous years and we wish the organisers and participants every success with this year's event.

Hilary Biehler

A Note of Welcome from the Convenor

Welcome to Trinity College Dublin's Fourth Annual Law Student Colloquium. The colloquium committee are delighted to have you here with us on this occasion. Law students, legal practitioners and legal academics have travelled from far and wide to participate in today's event, and I would like to take this opportunity to thank each and every one of you for doing so, on behalf of myself and the colloquium committee. We would also like to extend our thanks to all of the lecturers from Trinity College Dublin and elsewhere who have taken the time to act as chairpersons on today's panels; we are extremely grateful for your support. Finally, we would like to thank our sponsors *Allen & Overy* and *William Fry* and the "Friends of the Colloquium" whose financial support makes this event possible.

We have received countless submissions of exceptionally high quality this year, and the papers being presented today stand as testament to that fact. Indeed, whilst many of them address nascent legal issues, they are nonetheless exceptionally considered and well-conceived. These papers represent the vanguard of legal scholarship, addressing, as they do, topics as contemporary as ambush marketing in the London Olympics and Europe's regulatory response to rating agencies after the financial crisis. The diversity of the topics on which papers are being presented is also worthy of note: these topics range from feminist perspectives on the criminal law, to analyses of the scope of environmental concerns in WTO disputes, to appraisals of the constitutional challenges available in this jurisdiction as against those available abroad.

This year also marks the inception of the Brian Lenihan Memorial Address. This event has been organized by the Law School to celebrate the career of one of its most distinguished graduates, Brian

LAW STUDENT COLLOQUIUM 2012



Law School,
Trinity College Dublin,
Dublin 2.

Lenihan SC, TD, who sadly passed away last summer. It is set to take place at 6pm in the Chamber of the Graduates' Memorial Building. We are honoured this year to have the Hon. Mr Justice Bryan McMahon giving this address. We are also honoured to have Mr Paul Gallagher SC, former Attorney General of Ireland, as our chairperson. We invite all those who are participating in the colloquium, both audience members and speakers, to attend this event.

To conclude, I would like to again thank our sponsors, our guests, our speakers and our chairpersons. I would also like to personally thank the colloquium committee for all of the hard work and preparation that made this event possible. Any and all of its success is down to them.

Brian Ó Beirne
Convenor,
Law Student Colloquium,
Trinity College Dublin



Speaking Schedule

10:00 – 11:30

Constitutional Law

Historical Society Conversation Room, Graduates' Memorial Building

Chairperson: Dr Oran Doyle

David Kenny – *“Facial and As-Applied Constitutional Challenges: The Case for a New Type of Constitutional Action in Ireland”* (Trinity College Dublin)

Andrea Mulligan – *“The Case for a Constitutional Right to Know One's Genetic Parents”* (Trinity College Dublin)

Kai Leung – *“The Impact of Devolution on the State Integrity of the United Kingdom”* (The University of Cambridge)

Criminology & Penology

Room 11, Law School

Chairperson: Dr Alan Brady

Kevin Charbel – *“Born from prejudice, has it grown into a science? Modern risk assessment”* (Dublin City University)

Yvonne Kennedy – *“Inside the Mind of a Criminal: The phenomenon of Thought Crime and its potential impact on the trial process”* (University College Dublin)

Jill Griffin – *“No Future? - The Influence of Adolescent Rebellion on Youth Crime”* (Trinity College Dublin)

Medical Law

Room 21, Law School

Chairperson: Dr Neville Cox

Eimear O'Brien – *“Surrogacy Law in Ireland”* (Trinity College Dublin)

Sarah Fulham McQuillan – *“Case without a cause?: The Relevance of the “But For” Test in Medical Negligence litigation”* (Trinity College Dublin)

Colm Scott Byrne – *“A Time to Rethink the Law on Euthanasia and Assisted Suicide in Ireland”* (University College Dublin)

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Recent Developments in Commercial Law

Chamber, Graduates' Memorial Building

Chairperson: Dr Deirdre Ahern

Deekshah Namah – *“The Privacy and Electronic Communications Directive 2011- “Cookie” Law: A Legal Reality or Just a Controversy?” (University of Liverpool)*

Sean McGuinness – *“Conditional Payment Clauses in the Irish Construction Industry: Sections 5 and 6 of the Construction Contracts Bill 2010” (University of Oxford)*

Darragh Hyland – *“Sports Insurance: A Civil Alternative” (Trinity College Dublin)*

11:30 – 12:30

Tea & Coffee Break in the University Philosophical Society's Conversation Room, Graduates' Memorial Building

12:30 – 14:00

Philosophical Foundations of Law

Historical Society Conversation Room, Graduates' Memorial Building

Chairperson: William Binchy, Regius Professor of Law

Paul Behan – *“A Consideration of the Cracks in the Moral Justification of the ‘Egg Shell Skull Rule’” (Trinity College Dublin)*

Kevin Flanagan – *“Re-thinking Crime and Punishment: Looking Back, Going Forward” (Dublin City University)*

Stephen Brittain – *“Democracy and Treaty Interpretation in the Legal Order of the European Union” (Trinity College Dublin)*

Feminist Perspectives on Criminal Law

Chamber, Graduates' Memorial Building

Chairperson: Ivana Bacik, Reid Professor of Criminal Law

Conor Campbell – *“In sickness and in health?-the need for reform of Marital Rape in Ireland” (Dublin City University)*

Charlotte Kelly – *“Mother's here to help: Applying the Ethics of Care to the Duty to Rescue” (University of Cambridge)*

Amy Deane – *“Women commit much less crime than men do' is a statement that has achieved the status of a truth universally acknowledged.” (Trinity College Dublin)*



International Law: Procedural Questions

Room 11, Law School

Chairperson: Dr Catherine Donnelly

Usman Hameed – *“Need for adjustment of due process rights in cases involving international terrorism to promote the cause of state cooperation” (University of Glasgow)*

Alvaro Paúl – *“Highlighting Principles: Evidence Before the Inter-American Court of Human Rights” (Trinity College Dublin)*

Emma Fenelon – *“The Role of Third Party interventions before the CJEU & ECtHR” (Harvard University)*

Comparative Law

Room 21, Law School

Chairperson: Edward Murray, Allen & Overy

Elodie Vilchez – *“Judicial Review of Administrative Decisions in France and in Ireland: So Similar? The impact of the Courts having Jurisdiction” (Trinity College Dublin)*

Philip McDonald – *“Exploring the Relationship between Rules of Precedent and Statutory interpretation in Civil and Common Law Systems” (University of Cambridge)*

Jonathan McCully – *“Privacy and Rehabilitation: To what extent can we forget the past?” (Trinity College Dublin)*

14:00 – 15:00

Sandwiches and Coffee in the University Philosophical Society’s Conversation Room, Graduates’ Memorial Building

15:00 – 16:30

Intellectual Property

Historical Society Conversation Room, Graduates’ Memorial Building

Chairperson: Brian McElligott, William Fry

David Kiernan – *“Raising the Threshold for Copyright Protection: The Need to Revise the Originality Requirement in Copyright Law” (Trinity College Dublin)*

Denise Moran – *“Ambush Marketing at the London 2012 Olympics – ‘Let the Games Begin!’” (Trinity College Dublin)*

Colm Kinsella – *“TRIPS, Pharmaceutical Patents and Their Effect on Developing and Least Developed Countries” (Trinity College Dublin)*

LAW STUDENT COLLOQUIUM 2012



Law School,
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International Law

Room 21, Law School

Chairperson: Kanstantsin Dzehtsiarou, Irish Society for International Law

Prof. Asist. Maria Alejandra Calle-Cook (LL.M, MSc) – *“The Scope of Environmental Concerns for the purposes of GATT Art XX: An Overview from the WTO Trade Disputes (University College Cork)*

Stuart MacLennan - *Fiscal Sovereignty” (Trinity College Dublin)*

Sam Goodman – *“The Law of State Responsibility: Have the International Tribunals Got the Wrong Definition of ‘Control’?” (University of Cambridge)*

Human Rights and Humanitarian Law

Room 11, Law School

Chairperson: Anne Hughes

Fletch Williams – *“Placing Men in a Position of Unique Vulnerability: Cases of Male Rape in War, and Gender Narratives in Legislation” (University of Durham)*

Stephen Kirwan – *“Rethinking the Norm of the Responsibility to Protect: Towards a Better Use of Chapter VII” (Trinity College Dublin)*

C Starla Hagrita – *“The Effect of Natalist Welfare and Employment Laws on Women’s Quality of Work” (University of Cambridge)*

Banking Law

Chamber, Graduates’ Memorial Building

Robert Wyse Jackson – *“Europe’s Regulatory Response to Rating Agencies after the Financial Crisis: A Critical Review of the New Supervisory System” (London School of Economics)*

Faiza Ismail – *“Eurozone Debt Crisis: Ireland and Islamic Finance” (University of Ireland, Maynooth)*

17:00

Wine Reception in the University Philosophical Society’s Conversation Room, Graduates’ Memorial Building

18:00

The First Annual Brian Lenihan Memorial Address – The Chamber of the Graduates’ Memorial Building

Chairperson: Mr Paul Gallagher SC (former Attorney General of Ireland)

Keynote Speaker: The Hon. Mr Justice Bryan McMahon



Constitutional Law

Chairperson: Dr Oran Doyle

David Kenny, Trinity College Dublin

“Facial and As-Applied Constitutional Challenges: The Case for a New Type of Constitutional”

The speaker will propose that as-applied constitutional challenges as well as facial challenges should be adopted into Irish constitutional law. The speaker will also examine how the *jus tertii* rule, double construction rule and severance rule facilitate as-applied challenges and how such a challenge aptly fits with the text of Article 15.4. Detailed consideration will also be given to the host of benefits that would arise from embracing this type of challenge.

Andrea Mulligan, Trinity College Dublin

“The Case for a Constitutional Right to Know One's Genetic Parents”

The speaker will propose that the Constitution protects the right to know one's genetic parents and that, as a result, the policy adopted by the legislature must not permit anonymous gamete donation. The speaker will trace the development of the right of a child who has been placed for adoption to know its natural mother, and, in particular, will examine the case of *I'OT v B* to support her proposal. The speaker will also analyse the objections and complications that pertain to the recognition of the right to know one's genetic parents as a constitutional right.

Kai Leung, University of Cambridge

“The Impact of Devolution on the State Integrity of the United Kingdom”

The speaker will examine the “democratic deficit” concerns that have arisen in the United Kingdom and to what extent devolution has strengthened the State's integrity and legitimacy. The speaker will then examine devolution along three axes: autonomy, stability and the responsiveness of the constitutional framework to democratic demands. The speaker will focus on the impact of these three aspects on devolution with reference to Scotland, Northern Ireland and Wales respectively.



Criminology and Penology

Chairperson: Dr Alan Brady

Kevin Charbel, Dublin City University

“Born from prejudice, has it grown into a science? Modern risk assessment”

The speaker will examine the specific measures used by psychiatric institutions and rehabilitative programs to prevent individuals from committing future offences, as well as the risk assessment techniques used to calculate the likelihood of an individual re-offending. The speaker will then consider whether these methods are trustworthy and if the reasoning behind them is still based on a form of prejudice, in particular considering the ethical issues involved in a social worker or judge having the power to decide whether or not a person satisfies the threshold for reintegration into society.

Yvonne Kennedy, University College Dublin

“Inside the Mind of a Criminal: The phenomenon of “Thought Crime” and its potential impact on the trial process”

The speaker will propose that brain-mapping and associated practices be introduced in Ireland as part of the evidence that can be used in determining whether or not someone had the requisite *mens rea* for a crime. The speaker will draw on experiences from other jurisdictions, in particular India and the US, to illustrate how such practices advance the justice of the criminal justice system for both victims of crime and those who commit them. Consideration will also be given to the possible advantages and barriers to introducing brain mapping practices in the Irish Courts.

Jill Griffin, Trinity College Dublin

“No Future?: The Influence of Adolescent Rebellion on Youth Crime”

The speaker will examine the close links that archetypal forms of rebellion have to juvenile delinquency with particular focus on three types of teenage rebellion: aggression and disregard for authority, under-aged alcohol and substance abuse and youth gang crime. The speaker will then look at the current problems of the Irish Youth Justice System and, through drawing on a better understanding of the reasons for teenage rebellion, will make recommendations for reform. She will also make a suggestion as to how the urge to rebel could be channelled into something more positive



Medical Law

Chairperson: Dr Neville Cox

Eimear O'Brien, Trinity College Dublin

"Surrogacy Law in Ireland"

The speaker will discuss the absence of legislation pertaining to surrogacy in Ireland, in particular considering the rights of all parties involved in the surrogacy arrangement and the issues surrounding the citizenship of the child in cross-border arrangements. The speaker will also refer to the UK development of surrogacy law and make suggestions as to how the UK approach could be adopted in this jurisdiction.

Ms Sarah Fulham McQuillan, Trinity College Dublin

"Case without a Cause?: The Relevance of the "but for" Test in Medical Negligence Litigation"

The speaker will discuss the relevance of the "but for" test in medical negligence litigation, both in light of the number of "tools" that have been implemented through case law to supplement or replace it and in light of alternative tests that have been proposed in academic commentary. In analysing the courts' departure from a strict causation framework, the speaker will explore the application of the "but for" test in both Ireland and other common law jurisdictions.

Colm Scott Byrne, University College Dublin

"A Time to Rethink the Law on Euthanasia and Assisted Suicide in Ireland?"

The speaker will propose that the Irish government should rethink the current law and legalise assisted suicide and voluntary euthanasia in this jurisdiction. Through examining the impact of euthanasia in other jurisdictions, the speaker will explore the arguments for and against the introduction of the practice in Ireland. The speaker will also consider the ongoing morality and ethical debate with this issue.



Recent Developments in Commercial Law

Chairperson: Dr Deirdre Ahern

Deekshah Namah, University of Liverpool

“The Privacy and Electronic Communications Directive 2011- “Cookie” Law: A Legal Reality or just a Controversy?”

The speaker will discuss the implications of the use of ‘Cookies’ on Internet sites and how they can breach privacy controls. The speaker will also consider the potential impact of the new Cookie Law in the EU Privacy and Electronic Communication Directive 2011, and in the legislation already implemented in the UK, Denmark and Estonia. The speaker will then consider how the right to privacy is to be balanced with the commercial interests of those using the ‘Cookie’ data, in particular in relation to the online advertising industry.

Sean McGuinness , The University of Oxford

“Conditional Payment Clauses in the Irish Construction Industry: Sections 5 and 6 of the Construction Contracts Bill 2010”

The speaker will discuss the changes proposed to conditional payment clauses under the Construction Contracts Bill 2010 that will render partially illegal any clause in a construction contract that would make a right to payment, or timing of such dependent on the act of another. The speaker proposes the definition of a ‘construction contract’ as one worth upwards of €200,000, and the fact that this provides an obvious loophole that will permit the compartmentalisation of a project into smaller contracts which individually fall below this value, thereby undermining the very purpose of the legislation.

Darragh Hyland, Trinity College Dublin

“Sports Insurance: A Civil Alternative”

The speaker will examine the application of law in sport, in particular analysing how the FAI, GAA and IRFU handle the issue of civil liability for incidents on the playing field. The speaker will consider the potential alternatives to litigation-based solutions and whether legal intervention in realm of sport is really desirable.





Philosophical Foundations of Law

Chairperson: William Binchy, Regius Professor of Law

Paul Behan, Trinity College Dublin

“A Consideration of the Cracks in the Moral Justification of the ‘Egg Shell Skull Rule’”

The speaker will discuss the injustice associated with the “egg shell skull” rule and will question whether the rule really has the effect of deterring potential malefactors. The speaker will then consider the rule *qua* a principle of retributive justice and will highlight the injustice of the rule insofar as it operates against those lacking *mala fides*. He will thus propose that the application of the rule should be limited to instances of malicious intent rather than applying in the wider set of negligence and strict liability cases.

Kevin Flanagan, Dublin City University

“Re-thinking Crime and Punishment: Looking Back, Going Forward”

The speaker will discuss the rationales for imprisonment and the social utility of such a regime. He will argue that Brehon Laws, under which a system of imprisonment did not exist, is of relevance for modern society. In light of Brehon Law principles, the speaker will argue for an extension of the Atkinian neighbour principle to the criminal domain. He will also make a suggestion as to how the principles of restitution and compensation can be used to create a more just and utilitarian society.

Stephen Britain, Trinity College Dublin

“Democracy and Treaty Interpretation in the Legal Order of the European Union”

The speaker will discuss what democracy means in the EU. In contrast to the methodology of political scientists studying the EU, who move from democratic theory to prescriptions for making the EU more democratic, the speaker will accept the EU’s claim, in Article 10 TEU, that it is already a fully-fledged democracy, and will examine how the theory of consociational democracy offers an accurate fit for the EU as it is currently organised. He will then examine the implications of this for Treaty interpretation in the EU.





Feminist Perspectives on Criminal Law

Chairperson: Ivana Bacik, Reid Professor of Criminal Law

Conor Campbell, Dublin City University

“In Sickness and in Health?: The Need for Reform of Marital Rape in Ireland”

The speaker will trace the history of the legislation surrounding marital rape and propose radical reform in this area, arguing that it should come by abolishing the present law and introducing an amendment to the 1981 Act. The speaker will also explore the approach taken in other jurisdictions, particularly the US, and how the proposed amendment would fit with theories such as Classicism, Bentham’s Model and Beccaria’s Model.

Charlotte Kelly, University of Cambridge

“Mother’s here to help: Applying the Ethics of Care to the Duty to Rescue”

The speaker will discuss how criminal liability arising from a duty of care lacks a feminist legal perspective. They will then argue that applying one can bring new insight into an area which disproportionately affects women. The speaker will also consider how women more generally form a “care-giver” relationship with victims of criminal omission, and why this makes women, in particular, more likely to be penalised. The speaker will also examine the broader debate regarding the ethics of care.

Amy Deane, Trinity College Dublin

“Women commit much less crime than men do’ is a statement that has achieved the status of a truth universally acknowledged”

The speaker will discuss the criminological construction of the female offender, with particular regard to the writings of the seminal positivist, Lombroso. They will then go on to question whether justice is a gender-based concept, arguing that the defences provided by the criminal law are not sufficiently accommodating of women’s experiences. They will also examine how defences to murder are distinctively catered for the criminal man and male models of behaviour. Finally, the speaker will consider defences to murder in terms of their effectiveness and applicability to women.





Comparative Law

Chairperson: Edward Murray, Allen & Overy

Elodie Vilchez , Trinity College Dublin

“Judicial review of administrative decisions in France and in Ireland: So similar? The Impact of the Courts having Jurisdiction”

The speaker will conduct a comparative analysis between the seemingly similar Irish *ultra vires doctrine* and the French “recours pour excès de pouvoir” (the pleas of ultra vires). While both operate to control the legality of an administrative decision, the speaker will consider how the French system is more effective by reason of specialist administrative tribunals that have a specific jurisdiction to carry out reviews of administrative action. The speaker will also examine how the obligation to pay due deference has largely frustrated the ability of the Irish Courts to review administrative action.

Philip McDonald, University of Cambridge

“Exploring the Relationship between Rules of Precedent and Statutory Interpretation in Civil and Common Law Systems”

The speaker will examine the doctrine of precedent in a comparative context, with specific reference to rules of statutory interpretation in England and France. The speaker will then trace the differing role of precedent in both the common and civil law systems, before highlighting how there is a move towards convergence so that in each system uncertainty is minimised except where it is necessary to prevent injustice. The speaker will also discuss the parallel development of purposive interpretation of legislation in England and France and the differences between the two systems that remain.

Jonathan McCully, Trinity College Dublin

“Privacy and Rehabilitation: To what extent can we forget the past?”

The speaker will examine the constitutional tort protecting one’s right to privacy in Ireland and consider to what extent it protects one’s ability ‘to forget the past’. In particular, the speaker will explore the importance of rehabilitation in relation to criminals and whether the public interest is really served by bringing up past convictions that could destroy the successful outcomes of rehabilitative programmes. In analysing this balancing act, the speaker will draw on the theory of Ruth Gavison about the importance of recognising the right to privacy where it is clear society cannot disregard prejudices.



Intellectual Property

Chairperson: Brian McElligott, William Fry

David Kiernan, Trinity College Dublin

“Raising the Threshold for Copyright Protection: The Need to Revise the Originality Requirement in Copyright Law”

The speaker will examine the originality requirement of copyright law and will propose that the copyright threshold in Ireland be raised so as to protect ‘real’ creativity and originality. The speaker will then trace the development of copyright law and assess copyright legislation in other jurisdictions as a means to considering the different levels at which the thresholds in other jurisdictions stand. They will then consider whether these thresholds should be adopted in this jurisdiction.

Denise Moran, Trinity College Dublin

“Ambush Marketing at the London 2012 Olympics: Let the Games Begin!”

The speaker will examine the practice of ambush marketing and how intellectual property protection has been unsatisfactory in curtailing and attempting to combat this activity. The speaker will then analyse the Olympic anti-ambush marketing laws that must be enacted in host countries, focusing on the London Games and Paralympic Games Act, 2006. The speaker will then explore the far-reaching powers extended to the London Organising Committee in this Act through its creation of an intellectual property right to associate specifically with the London Games – the “London Olympics Association Right”.

Colm Kinsella, Trinity College Dublin

“TRIPS, Pharmaceutical Patents and Their Effect on Developing and Least Developed Countries”

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is easily the most divisive WTO Agreement to date, and the global IP system has undergone radical harmonisation and expansion with its implementation. The speaker will argue that TRIPS is not as clear or as courageous as necessary to secure a fair balance between the needs of developed countries and developing or least-developed countries in relation to access to pharmaceuticals and medicines for public health matters. The area of pharmaceutical patents is that where the problems with TRIPS are most acute; particularly as regards the effects that the obligation on developing countries to implement and enforce TRIPS provisions has. There have certainly been consequences for these nations in terms of public health and development and these will be discussed and analysed.



International Law

Chairperson: Kanstantsin Dzehtsiarou, Irish Society for International Law

Prof. Asist. Maria-Alejandra Calle-Cooke, University College Cork

“The Scope of Environmental Concerns for the purposes of GATT Art XX: An Overview from the WTO Trade Disputes”

The speaker will discuss the tensions between trade and environmental concerns in the context of GATT Art XX, and, in particular, the role of the Dispute Settlement System of the WTO in this area. The speaker will provide an overview of the challenges that have been taken against environmental concerns, both under the GATT (1948-94) regime and the WTO Dispute Settlement System. The speaker will then examine the jurisprudence that has emerged from these cases to determine whether environmental protection can operate as a legitimate aim to restrict trade.

Stuart MacLennan, Trinity College Dublin

“Fiscal Sovereignty”

The speaker will argue that fiscal sovereignty is a mere academic construct, designed to place special significance on the importance of fiscal authority to nation states. In doing so, the speaker will consider the three aspects of sovereignty: the territorial element, the personal element and the functional element and how these aspects overlap and operate to demarcate sovereignty. The speaker will also examine the inadequacy of customary rules of international law as a means to preventing overlapping of fiscal jurisdiction and how double taxation is a consequence of this.

Sam Goodman, University of Cambridge

The Law of State Responsibility: Have the International Tribunals got it Wrong?

The speaker will discuss Article 8 of the International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts, and will consider the “control” test employed by international tribunals in determining whether or not the wrongful conduct was attributable to an external power. The speaker proposes that the failure of the ICJ, ECtHR and International Criminal Tribunal to form a unified formulation of control undermines the utility of Article 8 and therefore that an authoritative “overall control” test should be adopted as it is appropriate to current challenges in the international community and the theory behind state responsibility.





Human Rights and Humanitarian Law

Chairperson: Anne Hughes

Fletch Williams, University of Durham

“Placing Men in a Position of Unique Vulnerability: Cases of Male Rape in War and Gender Narratives in Legislation”

The speaker will discuss the ramifications of the non-inclusion of men in legislation pertaining to rape and sexual crimes, in particular by examining cases from Rwanda, Democratic Republic of Congo, Uganda and the Serb-Bosnian War. The speaker will examine the position of male rape victims within society, their ability to get redress and whether the legal status of their victimhood is important to them personally and to wider society. The speaker will also explore how the feminist construction of rape has impacted the status of male victims and how this gender-discriminatory law has led to a societal view of rape as a crime unique to women.

Stephen Kirwan, Trinity College Dublin

“Rethinking the Norm of the Responsibility to Protect: Towards a Better Use of Chapter VII?”

The speaker will examine the right of States to use force in order to protect civilians from atrocities committed by their own governments, with particular focus on the ‘Responsibility to Protect’ principle. The speaker will discuss the origins of ‘R2P’ in the context of Iraq and Kosovo and its development with particular reference to the recent conflict in Libya. The speaker will consider the criticisms of ‘R2P’ as well as argue that this principle forms the basis for the establishment of a UN ‘standing army’ and the UN as a residual power-making body in contexts where the Security Council refuses to exercise power to intervene in a situation of humanitarian need.

C Starla Hagrita, University of Cambridge

“The Effect of Natalist Welfare and Employment Laws on Women’s Quality of Work”

The speaker will examine the introduction of natalist law and policy in the UK Labour environment. The speaker will discuss how the goal of natalist law is to produce a stable population while also increasing women’s participation in the labour market. The speaker will draw on empirical evidence to demonstrate that although women’s participation does increase, the adoption of such policies does not advance women’s quality of employment and work-life balance. Consideration will also be given to the impact of deregulated labour policies that keep women in lower paid jobs and casual labour.





Banking Law

Robert Wyse Jackson, London School of Economics

“Europe’s Regulatory Response to Rating Agencies after the Financial Crisis: A Critical Review of the New Supervisory System”

This paper will review the first European regulatory initiatives for Credit Rating Agencies, as established by Regulation 1060/2009, and as amended by Regulation 513/2011. It will analyse how effective the new European supervisory system will be in remedying Credit Rating Agencies’ failures prior to the crisis by reviewing the system against three fundamental criticisms of the CRA industry, notably (1) conflicts of interest (2) lack of competition and (3) incorporation of credit ratings into regulatory practise. The speaker will argue that the new supervisory system is fundamentally incomplete, as it fails to address satisfactorily the three criticisms noted above and will consider what additional regulatory measures will be necessary in Europe if the new supervisory system is to ensure that the mistakes of the crisis are not repeated

Faiza Ismail, University of Ireland, Maynooth

“Eurozone Debt Crisis: Ireland and Islamic Finance”

The speaker will examine the increasing influence of Islamic Finance in Ireland. The speaker will then argue for the need to introduce more regulations into the Irish financial system in order to attract investment from Islamic financial institutions thus boosting the much needed Foreign Direct Investment in this country and reducing the burden of foreign debts on both Ireland and the Eurozone. The speaker will also explore the suitability of the Irish and European infrastructure to facilitating the Islamic financial industry.





International Law: Procedural Questions

Chairperson: Dr Catherine Donnelly

Usman Hameed, University of Glasgow

“Need for adjustment of due process rights in cases involving international terrorism to promote the cause of state cooperation”

The speaker will examine the impact of international terrorism on the treaty obligations of states to guarantee due process rights to offenders. The speaker will then explore efforts to prevent the commission of offences through State cooperation in extradition, mutual legal assistance and asset freezing. Also patterns in the adjustment of due process rights and the impact of the courts in this matter will be considered. The speaker will finally conduct a comparative analysis of selected national courts and court cases to determine if any consistencies in changes to due process guarantees can be determined across different states.

Alvaro Paúl – Trinity College Dublin

“Highlighting Principles: Evidence Before the Inter-American Court of Human Rights”

The speaker will provide an overview of evidentiary principles and concepts as they are applied by the Inter-American Court, the American counterpart to the European Court of Human Rights, assessing whether the Court should alter its current evidentiary practices. In making these proposals, the speaker will examine some of the evidentiary differences between common and civil law traditions as well as explore the reasons behind the less formal approach adopted by international tribunals as opposed to national courts.

Emma Fenelon – Harvard University

“The Role of Third Party interventions before the CJEU & ECtHR”

The speaker will conduct an historical, quantitative and qualitative analysis of the role of third party interventions before the European Court of Justice and the European Court of Human Rights. In light of the increasing volume and complexity of the case law in these courts, the speaker will examine how third parties inform the courts of issues of public significance that go beyond the interests of the parties involved and provide specialist knowledge about how particular decisions may impact upon the groups that they represent. The value added by these third party interventions and the courts’ reactions will also be explored.



A Note on the Committee

Brian O'Beirne, Stephen Gerard Brittain, John Fitzsimons, Andrew Flynn, Yvonne Barry, Colm Kinsella, Donall Breen, Katie Jones, Peter Twomey, Eoin Shiel, Derwin Brennan, Emma Maher

The Committee would like to thank Paul Gallagher SC for chairing the Colloquium this year and the chairpersons of the individual panels. We are very grateful to Allen & Overy and William Fry for their continued generous sponsorship of the Colloquium. We are also very grateful to the continued support of the *Friends of the Colloquium*. Finally, we would like to acknowledge the continued support of the Law School, Trinity College Dublin.

If you would like to be involved in organising the Colloquium in 2013, please email law.student.colloquium@gmail.com

A Note on Friends of the Colloquium

The Committee would like to extend our thanks to the ongoing support of the *Friends of the Colloquium*:

Peggy O'Rourke

Ciaran Toland

Mark de Blacam

Niamh Hyland

Paul Sreenan

Roddy Horan



A Note on Sponsors

ALLEN & OVERY

With 4,750 people working in 37 major financial centres in 27 countries, and more than half of these outside the UK, Allen & Overy truly is a global firm.

Our international reach gives us the ability to provide world class expertise combined with local knowledge enabling us to work on some of the most exciting and complex transactions. Our rapid advances in areas such as Central and Eastern Europe and the Far East are indicative of our forward-thinking strategy. The future of Allen & Overy's success is in increased international working and by working with us you will be a part of this.

In 2010 / 11, we expanded our international reach to include offices in Australia, America, Indonesia and Qatar.

To ensure this success, we look for people who have an international outlook. As a trainee, you will work closely with colleagues across our international offices and will build up a network of contacts. Many of our trainees take up the opportunity to work in one of our international offices, which gives them a better understanding of how business works in other regions, and lasting contacts with clients and colleagues in other jurisdictions.

No matter where you are located, the deals you work on will usually be multi-jurisdictional. The support of our cutting-edge global IT systems is key in enabling allP parties to access documents 24/7.

Our lawyers come from all five continents and bring with them a wealth of experience, perspectives and languages. Lawyers from across all our offices regularly meet to share knowledge and train together. We need to build deep, well-informed and well-connected local law practices in each of our locations to allow us to assist national and global clients alike – a strategy which only a small number of law firms are successfully pursuing at the highest level.

For more information please go to www.allenoverly.com



LAW STUDENT COLLOQUIUM 2012



Law School,
Trinity College Dublin,
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WILLIAM FRY

William Fry is Ireland's corporate law firm of choice. As one of Ireland's largest firms, William Fry has been firmly established in the top tier for many decades. The firm's clients include many of the leading global and domestic companies operating in Ireland, Irish government bodies, financial institutions and entrepreneurs.

William Fry offer unrivalled corporate and commercial expertise and experience across the full breadth of the business sector. The firm back that reputation with a results-focused and innovative team of more than 270 high calibre lawyers and tax professionals and 110 support staff, who have worked on the highest profile corporate and commercial transactions and legal challenges of recent years.

William Fry is an exciting, challenging environment which continually provides our people with opportunities to demonstrate their shared commitment to delivering practical legal solutions for clients who demand the very best. Working as a team, we demand a lot of ourselves and never settle for second best. The firm's friendly open-door approach fosters learning and encourages and rewards initiative. Drawn from a diverse range of backgrounds and academic disciplines, William Fry people welcome new ideas and want to make a difference – both in our work for clients and through involvement in charitable, community and environmental initiatives.

For further information visit www.williamfry.ie

Trainees and Students

For information on the William Fry Trainee, College Placement and Summer Internship Programmes visit:

www.williamfry.ie/trainees/home.aspx

