



Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

The Lowest of the Low – 100 Years of Women at the Bar

**Delivered by Mr Justice Donal O’Donnell, Chief Justice, at The Council
of The Bar of Ireland’s Centennial Celebration of Women at the Bar on
9 November 2021**

It is an honour to be invited to attend and to speak at this celebration. I knew that the position of Chief Justice of Ireland carried with it a myriad of other duties, and something like 30 different committees, but I had not realised until recently that it also involved that most onerous task, and most elevated position, of being the ‘Token Male’.

I think it would be to commit the sin of ‘mansplaining’ of truly epic proportions to attempt to retell and appropriate the story of the first women called to the Bar of Ireland 100 years ago, and who thus became the first women called to the Bar anywhere in what was then the United Kingdom, or to tell the story of the sometimes painfully slow progress in female participation in the legal profession in the century that followed.

I consider it a real privilege to be invited to speak this evening and I do think that a male – even a token male – perspective has some value. I say that because I do not think that the story we celebrate tonight is one which can be reduced to brave pioneering women overcoming hostile male patriarchy, even though this has, of course, occurred. That is both too crude and, ultimately, not as inspiring as a fuller picture portrays. I would suggest that we should see the progress of women at the Irish Bar, and later at the Bars of the north and south, more generally as a challenge to, and the eventual vanquishing of, societal attitudes shared sometimes by women as well as men. Ultimately, the overthrow of those attitudes required, or at least involved, efforts and decisions of women but also of men. By definition, the Parliament that enacted the Sex Disqualification (Removal) Act of 1919 was composed only of men and the Benchers of the King’s Inns who

accepted the application of both Averil Deverell and Frances Christian Kyle, who waived the requirements to eat dinners in both their cases, were also by definition, men. And perhaps more pertinently, it can be said that the admission to the Bar of Averil Deverell and Frances Kyle 100 years ago by Sir Thomas Molony, the last Lord Chief Justice of Ireland, and accordingly the last person who can claim to be the predecessor of both Siobhán Keegan and I, meant that the legal world, the world of the Bar and the bench, and the men who made it up at that time, would never be the same. It was a world which was changed utterly and for the better.

Take for example the group of students called on 1st November 1921. We know that it included two women and that the event was such that their photographs were carried in newspapers from New York to Bombay. We know also that one of them, Frances Kyle, won the John Brooke prize for first place in the Bar finals. That was a significant achievement in its own right, but a measurement of it can be found if we consider that the candidates immediately behind her included two of the most significant lawyers of the 20th century in Ireland.

John Clarke McDermott was second place and won the Society's exhibition prize. In later years he became a High Court judge in Northern Ireland and went from there to the House of Lords where he won a reputation as the Great Dissenter, consistently on the side of expanding the scope of the law of tort and overturning the Victorian restrictions on the capacity of workers injured in industrial accidents to bring claims against their employers. In 1951, he took the unusual step of returning to Northern Ireland as Lord Chief Justice and became probably the dominant figure in the legal world in Northern Ireland and who won the respect and admiration of the entire legal community.

Third was Patrick McGilligan who went on to a glittering career as Minister for Industry and Commerce, Minister for External Affairs and subsequently Minister for Finance, and then Attorney General. He established the ESB, the great industrialisation project of the early Free State, and was a member of the stellar delegation sent by the Free State to take part in the Westminster conference. He was a key drafter of the Statute of Westminster 1931, significant in the development of many countries and which in the case of this jurisdiction allowed for the transition from the Free State Constitution to the Constitution of 1937 and the dismantling of the Treaty provisions without confrontation and possibly even

bloodshed. He was also the long-time professor of Constitutional Law at UCD who, in the words of John Kelly, trained many of the lawyers who would later become judges who breathed life into the Constitution in the 1960s and later. The 1937 Constitution passed by a very small majority and was dismissed by many people derisively as 'Dev's Constitution'. Paddy McGilligan was perhaps the person most instrumental in securing acceptance of the Constitution across the political divide in Ireland.

The fact that Frances Christian Kyle finished ahead of these two men who can be properly described as giants of the Irish legal world is undoubtedly one of the many measures of her talents, but what I think is worth trying to imagine as well, is the impact on John McDermott and Patrick McGilligan of their exposure to the class that contained Frances Kyle and Averil Deverell. I don't know what the views of these men were when they began to attend the King's Inns, but it is hard to think that they ever saw the world in quite the same way again. There is, I think, some hint in that in the obituary of Frances Kyle that was carried in the London Times and which I suspect may have been influenced by Lord McDermott:-

"Goodness indeed was the quality which stood out above all others. The powerful intellect was guided by a spirit so gentle and generous that it never overawed those less gifted. Few who have been born with the baptismal name Christian have borne it more worthily."

We can and should celebrate the steady trickle of strong-minded and independent women who followed Frances Kyle and Averil Deverell sometimes into the legal profession or into broader public life. I think of Gertrude Bannister and Mrs Gavan Duffy shown in the painting downstairs sitting in court in London as part of the defence team assembled for Roger Casement. The reputations of Serjeant Sullivan and Gavan Duffy were enhanced by the steps they took but Gertrude Bannister lost her job as a teacher simply because she had supported her cousin. I think of Frances Moran, the first female senior counsel in the State. I think of Professors Mary Hayden, Agnes O'Farrelly and the other members of the National University Women's Graduate Association who confronted Eamon de Valera in 1937 and told him that whatever the terms of the Constitution, professional women were not going to be sent back to the kitchen.

I think in particular of my father's friend and contemporary, Sheelagh Murnaghan, who was called to the Bar of Northern Ireland in 1948 and who was, for a long time, one of the only women practising at the Bar of Northern Ireland until the intake in 1974 that included Mary McAleese. Sheelagh Murnaghan comes from a famous Irish family and it is something of a pity that modern practitioners approach the name through the more recent judicial holder rather than through the memory of James Murnaghan, one of the finest judges of the early Supreme Court and Professor of Constitutional Law in UCD. On an occasion I met her with my father, I remember he teased her gently (or at least by his standard, reasonably gently) about cousin George, something she met with only a wry smile. Sheelagh Murnaghan captained the Irish hockey team. In addition to becoming the sole woman in a very small and conservative Bar, she was also a long-time campaigner on behalf of Travellers at a time when that group was even more ostracised in Ireland, North and South, than it is today. She was also a Liberal MP at Stormont for the Queen's University seat, and in that guise she introduced private members' bills in the mid-late 60s attempting to incorporate the provisions of the European Convention on Human Rights into domestic law, a proposal that was dismissed scornfully by a Unionist majority which thought it knew better.

I would suggest that while tonight is an occasion for celebration of an illustrious past, it is also an opportunity to recognise challenges for the future.

We can and should celebrate the very high numbers of women now at the Irish Bar and in the legal profession more generally, and recognise for a moment that these figures compare very favourably with the proportion of women at senior levels in business, the Oireachtas and indeed at Cabinet level. We can and should celebrate the high percentage participation by women at every level of the judiciary, and how rapidly that was achieved. It is amazing for me that I can myself recall the appointment of the first woman to the Circuit Court, among some muttering: that was someone called Catherine McGuinness. She was quickly followed by my colleague Elizabeth Dunne.

But it would, I think, be a disservice to the pioneers of the past and the trailblazers of the present not to recognise that there are still many challenges, and that we will always face the same challenge that they did of opposing prejudice, ignorance and bigotry with the weapons of tolerance, education, intelligence and reason. We

should also recognise that prejudice does not come easily labelled and recognisable. As the pioneers of 1921 knew, it can sometimes be hidden in attitudes that may appear reasonable or are widely shared or come from quarters who proclaim themselves progressive and radical.

There is an obvious challenge in the under-representation of women at the Inner Bar, and that is a particular concern to me since the courts system depends upon high quality advocacy and legal knowledge, and the ranks of senior counsel should be a primary pool of candidates for judicial appointment to the High Court. There are many complex factors at work here, none of which provide easy answers. It can be easy to argue that, for example, the judicial appointment system cannot promote women lawyers who do not promote themselves. This may be true in some instances; we do need women to back themselves and put themselves forward. However, we must also accept that this is not always easy, or indeed, possible. Women cannot be expected to promote themselves unless they are in a space where this is supported and encouraged.

There are also other challenges. Daniel O'Connell recognised that it was morally impossible to complain about discrimination on the grounds of religion and remain silent about discrimination on the grounds of race, which made him one of the most vocal opponents of slavery. We should recognise that the trailblazers we celebrate tonight came from comfortable backgrounds. They were educated at Alexandra College or finishing school in Switzerland and Trinity College, and in some cases, had longstanding family connections with the legal profession. But the powerful idea of equality that carried them into the legal profession should not stop there. If we are serious about it then we must recognise that it involves diversity of gender, sexual orientation and social and ethnic backgrounds. If we need a judiciary that can inspire confidence in a modern and diverse Ireland, then that can only be achieved by encouraging and promoting a diverse legal profession. That challenge is a challenge not to preach to others, but to confront our own thinking in a way that the benchers of 1921 were forced to confront their deep seated assumptions shared by much of society.

Another aspect that we may find in the story of 1921 is rarely highlighted. Frances Kyle and John Clarke McDermott both went back immediately to Northern Ireland to be called to the newly created Northern Ireland Bar by Sir Denis Henry, the new

Lord Chief Justice of Northern Ireland. Ireland was in turmoil and the Treaty negotiations were under way in London, but Northern Ireland had already been created by the Government of Ireland Act 1920. It is worth considering, then, the almost complete lack of knowledge and empathy that the newly elected leaders in Dublin had for what was happening in what was becoming Northern Ireland.

There is a wonderful website in the Public Records Office of Northern Ireland and in it, it is possible to see the signature of every man over the age of 16 who signed the Ulster Covenant, and, in the spirit of the time, the corresponding declaration signed only by women. There among the half million signatures you can find the signatures of the kindly cultured and intelligent John McDermott, and the generous and thoughtful Frances Christian Kyle. Did their classmates in 1921 in the King's Inns give any thought to why it was that such intelligent principled sensitive people would commit themselves to use all means – a phrase that very significantly was not qualified in any way such as all lawful means – to resist a government from Dublin? And 100 years later, do we in this jurisdiction really give any thought to why it is that with the power of the Catholic church in this jurisdiction now negligible, and where we have a confident multi-cultural society with a strong economy, that if the Ulster Covenant were presented to people in Northern Ireland, it's doubtful that the numbers would change? And instead of simply deploring that fact, it may behove us to confront and challenge our own comfortable assumptions in the way that the benchers of 1921 were forced to do.

Finally, tonight, can I welcome the "In Plain Sight" initiative to add to the stock of paintings in the King's Inns by producing and adding to the overwhelmingly male portraits that are currently maintained here. I know that the position of 'Leading Cynic' is perhaps the most hotly contested position in any Bar Council election and that some might see this as only a superficial gesture. Even if it was only a gesture it would be worthwhile, but for me its significance is much greater. It reminds us of why these paintings are here in the first place. The subjects of the paintings were respected and admired by their colleagues and seen as an example to younger lawyers to follow.

We do not have a portrait of perhaps the greatest of our predecessors at the Irish Bar but we do have a bust of Daniel O'Connell, the Great Emancipator. To secure Catholic emancipation in 1829 was an astonishing achievement for any Statesman.

It was a victory over the establishment of the greatest power then on the face of the earth, and it was achieved by organising a poor, ill-disciplined and uneducated populace clinging to the land on the margins of an enormous empire. But what was most striking about it was that it was achieved peacefully and by reliance on a single powerful idea that religion, no more than gender or race, had nothing to do with qualification for office. This is the very same idea of equality that lies behind the events we celebrate tonight.

It is often forgotten that the campaign for Catholic Emancipation was not an exclusively Irish matter – it was led in England by Catholic members of the aristocracy who considered themselves natural leaders, meeting on an equal basis with the King, his court and his cabinet, and who were uneasy about, and dismissive of, O’Connell and his movement. But the decisive moment came in the by-election in West Clare when O’Connell and his allies persuaded the 40 shilling freeholders to publicly defy their landlords, and at a time when all votes were recorded in public, Daniel O’Connell was elected by the astonishing margin of more than 20,000 votes to 900. Opposition to emancipation in England crumbled. One of the opponents of emancipation, Lord Ripon, remarked bitterly that it had been achieved not by the aristocrats of England but by what he described as the lowest of the low: the people of Clare and the barristers of Dublin.

Let the barristers of today wear that badge with pride. I hope it can be said in 100 years from now that the lawyers of Dublin and Ireland were true to that tradition of opposing ignorance, bigotry, intolerance, bullying and abusive power, wherever that might emanate, using only the tools of tolerance, education, intelligence and reason. And let it be said that a new generation of lawyers coming to the Bar 100 years after Frances Kyle and Averil Deverell will be inspired by their achievements and will breathe fresh life to the commands of Article 40.1 of the Constitution, as taught by Paddy McGilligan, to hold all citizens as human persons equal before the law, and on a night like tonight, it can be said, equal in the law.