

## Courtroom Dialogues and Feminist Legal Theory in Irish literature

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**Abstract:** This article examines the use of courtroom dialogues in two of the leading works of Irish language literature, and how they acted, at the time of their writing, as a mechanism which permitted both author and audience to question societal attitudes to female agency and sexuality – and how they continue to facilitate such critical reflection contemporaneously. Specifically, the piece examines the use of courtroom dialogues in *Cúirt an Mheán Oíche* by Brian Merriman (*CMO*) written around 1780<sup>2</sup> and in *An Triail* by Máiréad Ní Ghráda (*AT*) originally performed in 1965 and published in 1978. Both pieces, written nearly two centuries apart, use courtroom dialogues, and the formal mechanisms of testimony and cross-examination to articulate and critique the social subordination of women portrayed in the texts, and to question the restraints on female agency and sexuality imposed by the societies in which their characters exist. Through the works' use of judicial settings and dialogues both texts articulate a feminist theory of law which aligns with Catherine McKinnon's dominance theory.

**Keywords:** feminist legal theory, gender, cross-examination, testimony, dominance.

### Introduction

For a body of literature frequently characterised by, and located in, intensely local, and frequently rural, settings, the recurrence of the courtroom as a narrative device in leading works of Irish language literature can seem incongruous. Yet, the institutions of State, their actors and dialogues have intermittently recurred as a narrative device in Irish literary works from *Párlíamant na mBan* in the late 1600s onwards. In particular, the use of the narrative device of the courtroom is used, to striking effect, by Máiréad Ní Ghráda in *An Triail (AT)*<sup>1</sup> originally performed in 1965 and published in 1978 and Brian Merriman in *Cúirt an Mheán Oíche (CMO)* written around 1780<sup>2</sup>. Both works use courtroom dialogues, and the formalities associated with courtroom proceedings to articulate and critique the social subordination of their central female characters, articulating a vision which is broadly aligned with the feminist theory of law propounded in Catherine McKinnon's dominance theory.

This piece examines and contrasts the use of the courtroom dialogues in both *CMO* and *AT* and establishes how they function to permit critical engagement by both author and audience with social attitudes to female agency and sexuality. Beginning with an examination of the editions and translations of both works, as well as the differing genres of both texts, the piece defends the versions relied on as offering the most objective translations of the original works.

The subsequent sections then proceed to outline the feminist legal theories of Catherine McKinnon, with a particular emphasis on McKinnon's theory of dominance before turning to address the content of both texts in their portrayal of femininity and social attitudes towards women. Finally, the concluding section, analyses how the texts examined can be read through the lens of McKinnon's work as forming part of a feminist theory of law.

The analysis takes as its basis the Irish language text of *AT* published in 1978, and which the author translated herself for the stage in 1966. However, no popular translation is currently available and the translations provided here are those of the author of this article. The choice of texts and translations in relation to *CMO* is rather more difficult. As Nic Dhiarmada notes, numerous manuscript copies were circulating not just in Merriman's lifetime, but far into the nineteenth century.<sup>3</sup> Indeed, since it was written the play has been fully translated on at least 12 occasions into English, - versions which to a greater or lesser extent emphasised, minimised and occasionally supplemented the content of the

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original work, subjecting it to what Heaney referred to as the ‘social and intellectual preoccupations’ of its translators – none of whom, to date, have been female.<sup>4</sup>

Though many of these translations are grounded in a liberal, humanistic view of the work, early translations by Ussher<sup>5</sup> (1926) and O’Shea<sup>6</sup> (1897) were clearly shaped by ideas of nationalism and the need for an Irish identity while the translations by O’Connor (1945)<sup>7</sup> and David Marcus (1953),<sup>8</sup> both use the poem to attack the Catholic Church’s power in Irish society and the repression of sexuality occasioned by Catholic teaching. The result is that those authors stray somewhat from the original text, with Marcus in particular emphasising the sexuality of the poem’s main passages at the expense of the other themes.<sup>9</sup>

Heaney’s translation (1993)<sup>10</sup> meanwhile, specifically reads Merriman’s poem in the context of the feminist concerns emerging in Irish culture in the late 1980s and early 1990s, viewing it as “a paradigm of the war initiated by the women’s movement for women’s empowerment, their restoration to the centre of language and consciousness and thereby also to the centre of all institutions and functioning of society.”<sup>11</sup> Similar views underwrite Patrick C. Power’s earlier, and complete, translation (1971).<sup>12</sup>

In its consideration of *CMO*, and in particular given its expressed aim of analysing the text through the lens of a feminist theory of law, this article eschews explicitly slanted translations and has reference to the more neutral versions of the work in the Irish language version produced edited by Ó’Murchú<sup>13</sup> (1982) and the most recent translation by Ciarán Carson, published in 2007.<sup>14</sup> Carson’s expressed understanding of translation hinges on its central impossibility, and he thus seeks to illuminate through his version the inevitably incomplete and troubled relationship between original and translation, rather than imposing upon it a theory or view of the author’s original work.

The analysis which follows thus compares two texts one written, and translated by a woman, and the other written, and repeatedly translated exclusively by men. It is thus subject to the subjectivities of translation and insight which the experiences of authors and translators of each gender bring to bear on the works at issue.

A second, and no less fundamental difference, between the two works discussed and one which bears highlighting at the outset is that they are opposed in terms of genre. *CMO* is a satire which at times crosses into the realm of farce given its surreal setting, most notably in the verdict which the judge delivers at the poem’s conclusion. In contrast, *AT* is a tragedy characterised by a stark realism, unmitigated by moments of comedy. Though both texts ultimately seek to expose societal double standards in attitudes towards female sexuality, and agency, they do so in starkly different ways – and with varying complications for the reader as a result - as the final portion of this article analyses.

### Feminist Theories of Law

Feminist theories of law are based in the belief that the law has been fundamental in the historical subordination of women and seeks to analyse and explain the manner in which the law has aided this subordination as well as looking to how the law might be used to remedy it.<sup>15</sup> While the understandings of feminist legal theory are various, and in some cases divergent, four primary theories can be identified: liberal equality theories; sexual difference theories; anti-essentialist theories and, finally dominance theories.

Theories which centre on liberal equality while they embrace the status quo of a rights-based approach to law, call for the revision or re-orientation of traditional liberal categorisations in order to account for their differential impacts on women and other marginalised groups.<sup>16</sup> Sexual difference theories emphasise the role and significance of gender-discrimination and call for affirmative legal responses to counter such imbalances. Difference theories can thus conflict with more traditional approaches which seek to emphasise the same-ness of women<sup>17</sup> while anti-essentialist theories take this argument a step further and call for a deconstruction of the idea that there is a single “female” voice which must be

vindicated and seeks to accommodate the differences in inequality which are experienced as between women of varying class, racial, sexual or socio-economic identities.<sup>18</sup>

Finally, dominance theories reject liberal feminism and view the legal system as a mechanism for the perpetuation of male dominance and in this respect form a part of the broader school of critical legal studies.<sup>19</sup> The dominance theory is perhaps most vocally and notably proposed by Catherine McKinnon who argues that women's sexuality is socially constructed by male dominance and operates as the central means by which their subordination is achieved in society.<sup>20</sup> In contrast to sexual difference theorists,<sup>21</sup> dominance theorists, argue that the differences in treatment between the sexes result from 'the perspective that has been forced on women' rather than any naturally occurring difference in capacity or social roles.<sup>22</sup>

Drawing an analogy with Marx's theory of class struggle McKinnon argues that law is designed to facilitate men's sexual access to women<sup>23</sup> as part of a legal system which is designed to establish, or at a minimum to preserve, male power and which constructs understandings of femininity and sexuality to reinforce this, albeit unstated, aim.<sup>24</sup> McKinnon's work thus views traditional legal theory as unable to adequately reflect or accommodate the reality of female experience, leading to the necessity for women to generate a legal theory informed by the female experience and inclusive of female perspectives.<sup>25</sup>

McKinnon's work in feminist theory has, however, also described pornography as a civil rights violation and has been characterised by other feminist scholars as resulting in a censorship of female sexuality that runs counter to more recent feminist understandings of sexual equality by retrenching the categorisation as a woman as an identity indivisible from injury.<sup>26</sup> This view, however, misinterprets McKinnon's motivations in opposing pornography by conflating her opposition with an endorsement of previous views of pornography as violating "community standards" of sexual decency or modesty. McKinnon, as well as Andrea Dworkin, characterise pornography as problematic not because of its content but rather due to its functional operation as a form of dominance and have sought to enable women to seek damages under civil rights law when they can prove they had been harmed through its production, specifically inspired by contexts in which individuals who had previously acted in such materials had subsequently revealed they did so under coercion or duress.<sup>27</sup>

In this respect, and as the final portion of this work examines, McKinnon's work is ultimately oriented<sup>28</sup> on a need to recognise the institutional dominance of men at and in law, and to seek to re-orientate the institutions and laws which permit the resulting subordination of women.<sup>29</sup>

### **Cúirt an Mheán Oíche**

*CMO* has been variously considered, the greatest comic work in Irish,<sup>30</sup> "a dark flower of Irish literature",<sup>31</sup> and the product of a mind "sour and mocking [...] lacking in the gentle qualities."<sup>32</sup> Yeats in his consideration of the text lamented the lack of "a Gaelic scholar [...] or failing that some man of known sobriety of manner and of mind [...] to introduce to the Irish reading public this vital, extravagant, immoral, preposterous poem."<sup>33</sup> Yet, despite Yeats' concerns that the poem would remain unknown to an English-speaking public, by the time of his statement the work had been translated at least twice into English (albeit apparently not to his liking), and was widely read and recited in its original Irish.<sup>34</sup>

Indeed, the work was unusual in its popularity, forming part of a vibrant manuscript as well as oral tradition in Ireland with Ó Murchú arguing it "reached the zenith of its popularity in the first half of the nineteenth century."<sup>35</sup> It is estimated that there are more than one hundred hand copied versions of *CMO* in existence, attributable to some seventy-five scribes<sup>36</sup> in various Irish dialects – evidence that the transcriptions have their origin in dictations taken from oral recounting of the story.<sup>37</sup> This theory is favoured by scholars who note that the text would traditionally have been recited aloud.<sup>38</sup> Indeed, accounts from the end of the nineteenth century note that residents of Co. Clare could recite large

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portions of the text from memory some two centuries after its composition<sup>39</sup> and contemporaneously it remains one of the Irish language's most enduringly popular and intriguing texts.

This is attributable, in part, to the work having proven to “be uniquely resistant to interpretation of a kind which would suggest that one has extracted a definitive interpretation from it”.<sup>40</sup> Internal comment about the context of the work is scant and its content has permitted various translators and interpreters to find in its lines support for a wealth of ideas and themes. Despite this characterisation of the text as resistant to interpretation, the text has been consistently described as being pre-occupied with ideas of individual liberty both psychological and practical with Ó Cruaíaoich describing the theme of Merriman's poem as ‘a civil and psychological liberation of the individual’<sup>41</sup> while Eglinton, has described Merriman as the ‘Irish free-thinker of the eighteenth century.’<sup>42</sup> Such comments are supported on even the most cursory examination of the text which emphasises ideas of freedom of choice and the social and functional constraints on its exercise.

### Context and Composition

It is generally agreed that *CMO* was composed in East Clare, a rural area on Ireland's West Coast in or around 1780 by Brian Merriman, a native Irish speaker, farmer and school teacher who lived and worked in East Clare and the nearby city of Limerick for the duration of his lifetime. Regardless of its precise date of composition, the text was authored in a period of Irish, and indeed world, history characterised by rapid political and social revolution and accompanying, often radical, shifts in philosophical thought.

In particular, the period surrounding the text's creation saw the revolutionary wars in France and the North American colonies, as well as the first hints at rebellion in Ireland which would culminate in the (failed) rebellion of the United Irishmen in 1798.<sup>43</sup> The shifts in philosophical thinking which accompanied these revolutionary movements in their nascence and actualisation was no less significant. The decades surrounding the completion of *CMO* saw almost unprecedented levels of publishing on societal organisation with “The Social Contract” (1762) and the new constitutions of the United States and the French Republic coming shortly before the presumed date of the work's completion while equally revolutionary works including a “A Vindication of the Rights of Women” (1792) came shortly thereafter. While Merriman lived and worked exclusively on Ireland's west coast, the remarkable, and rapid shift in social attitudes to equality and self-determination which these events and publications represented could not but have had an impact on the author, in particular given his work with the Irish middle and gentry classes who traditionally sent their sons to continental Europe to be educated.<sup>44</sup>

This international context must also be set against the situation closer to Merriman's home. While the decades surrounding 1780 saw the repeal of some of Ireland's penal laws through the Catholic Relief Acts<sup>45</sup> full Catholic emancipation would remain elusive until the nineteenth century. In the interim, dissatisfaction with discriminatory laws and the perceived distance of the English government in Dublin from the general population remained high.<sup>46</sup> The period also saw the first stirrings of debates particularly relevant to *CMO* concerning the punishment of “female” crimes such as infanticide and concealments of births.<sup>47</sup> Entering into this milieu the themes raised by *CMO* are hardly surprising, indeed Ó'Murchú notes that Merriman appears to have captured the mood of the times well.<sup>48</sup>

### Structure and Content

The poem opens with what has been characterised in some works as a parody of the traditional Irish *aisling* genre<sup>49</sup> with the poet wandering in an idyllic rural landscape and lying down to sleep.

Ba gnáth mé ag siúl le ciumhais na habhann  
Ar bháinseach úr's an drúcht go trom  
In acide na gcoillte i gcoim an tsléibhe  
Gan mhairg gan mhoill ar shoilse an law<sup>50</sup>

‘Twas my custom to stroll by a clear winding stream  
With my boots full of dew from the lush meadow green  
Near a neck of the woods where the mountain holds sway  
Without danger or fear at the dawn of the day<sup>51</sup>

However, it is not clear that the view of the poem as a parody of the aisling is entirely accurate. Ó'Buachalla, for example, has noted that the work is not a parody but a "very effective" use of the old contrast raised by the aisling genre between the actual and desired state.<sup>52</sup> According to Ó'Buachalla, the principal function of the aisling is to give literary expression to the prophetic statement – the purpose is not to encounter the spéirbhean but to receive her message<sup>53</sup> and so while the political message with which such poems were infused was subject to change over time the mechanism remained the same – as is the case in *CMO*.<sup>54</sup> The visual imagery invoked by the author is, however, certainly less romantic a traditional aisling in which an idealised female encounters a reciprocally augmented male hero.<sup>55</sup>

Setting the tone for the work which is to follow, in *CMO*'s opening lines the poet is roused not by the incarnation of a shackled Ireland appealing to the poet to free her but by a ferocious, ugly hag twenty feet tall. Her cloak dragging through the mud and armed with a bailiff's staff, she shouts of her dissatisfaction with the poet and announces she has come to bring him before the Midnight Court, ruled over by the fairy Queen Aoibheall, to account for the failures of the men of Ireland.<sup>56</sup>

Do chonairc me chum le ciumhais an chuain  
An mhásach bholgach tholgach thaibhseach  
[...]  
Sé nó seacht do shlata is fuílleach  
Péirse beacht dá brat ag sraoilteach  
Léi sa tslab le drab is ríobal<sup>58</sup>

A female approached from the side of the quay,  
Broad arsed and big-bellied, built like a tank  
[...]  
Of some twenty-one feet while the hem of her dress  
Trailed five yards behind, through the mire and the  
muck<sup>57</sup>

'Muscail, corraigh, a chodlataigh ghránna,  
Is dubhach do shlí bheith snte id shliasta  
Is Cúirt 'na suí is na mílte ag trial ann<sup>59</sup>

Rouse yourself, stir yourself, sluggard awake!  
Shame on you, blame on you, slumped on your ear,  
While court is convened and thousands draw near!<sup>60</sup>

The hag indicts the lack of freedom, insecure tenure and unfair legal system in Ireland proffering the fairy court as an alternative where the weak are empowered,

Ní cúirt gan acht gan reacht gan riail,  
Ná cúirt na gcreach mar chleacht tú riamh  
An chúirt seo ghluais ó shluaite séimhe,  
Ach city na dtrua, na mbua is na mbéithe<sup>61</sup>  
Gan sealbh gan Saoirse ag síolrach seanda,  
Ceannas I ndlí ná cíos ná ceannphoirt,  
Scríosadh an tír is níl na ndiaidh  
In ionad na luibheanna acht flíoch is  
fiaile,<sup>63</sup>

Not a court without standing, or statute, or code,  
Nor an imported court of the plundering mode,  
But a court that is ruled by a civilised throng,  
Where the weak are empowered and the women are  
strong.<sup>62</sup>  
An old race indeed without freedom or land  
Without rights to its rent, and its leaders all banned,  
The rich farmlands ruined, their bounty replaced  
By brambles and nettles and fields full of waste<sup>64</sup>

This subversive vision of the female court convened and power balance inverted amid the decay of the country's "normal" institutions continues through the work.<sup>65</sup> Brought before the Court, the poet finds the Queen/Judge Aoibheall who has been dispatched,

[...] chaointais choir seo.  
Falsacht dlí do chloí go comhachtach,  
Seasamh i dteannta fann is fánlaig  
Is caithfidh an teann bheith ceansa tláith ligh  
Caithfidh an neart gan ceart 'na ceart bheith  
suite.<sup>66</sup>

[...] to wipe out all iniquitous laws  
To stand on the side of the poor and the weak  
To ensure that the mighty become mighty meek  
The power to be sheared from the powers that be  
And due right restore to its rightful degree<sup>67</sup>

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The Judge pledges no favour or bias will “trample on law as is often the case”<sup>68</sup> and reasserts both the jurisdiction and authority of the Midnight Court to hear the matter that is brought before it<sup>69</sup> given the absence of Ireland’s leaders.<sup>70</sup> The emphasis on the indigenous, sovereign nature of the Court’s constitution, and the concerns which it is charged to settle are notable in the socio-legal context of the work. Although removed in time from the “The Flight of the Earls” (1607) and Jacobite-Williamite wars (1689–1691), *CMO* is set in a country which, though experiencing a period of relative calm, was nevertheless characterised by repeated clashes between indigenous and English landholders and cyclical, violent protests against English rule, given frequent and famous expression through literature.<sup>71</sup>

Indeed, Woulfe in his translation specifically notes and emphasises that the destruction of Gaelic civilisation was still fresh and alive in cultural memory at the time of Merriman’s writing and particularly so in Co. Clare. Woulfe, himself a schoolmaster in East Clare and Limerick in early 1800s was well placed to make such an observation.<sup>72</sup> Equally, Ó’Murchú, has argued that, in its emphasis on rights and law, *CMO*’s language points to the absence of both in the context of the oppression occasioned by contemporaneous legal and Parliamentary activities in Dublin.<sup>73</sup> Heaney also sees the Court, not only as a fantasy of feminist justice but as a court which sought to reassert the order and legitimacy which the penal laws and more general institutional neglect had deprived the country of at the time of writing.<sup>74</sup>

More broadly the Judge in *CMO* contextualises the Court as one which has been called upon in a country whose official institutions have decayed and where indigenous leadership has fallen away. Worse still, the people are unable to turn to the law as a means of redress in the context of the work, as both the legal profession and the judiciary who administer it are characterised as corrupt,

Doilbheadh dúr an dúcheilt dlíthe, An fann gan feidhm ná faighidh ó éinne, Acht clampar doimhin is loighe chum léirscris, Flsacht fear dlí is fachnaoidairdnirt, Cam is calaois, faille is fábharr, Scamall an dlí agus fiordhath fannchirt, Dalladh le <i>brib</i> , le <i>fis</i> , le <i>falsacht</i> . <sup>75</sup>	When justice lies shackled her laws disarrayed The weak are enfeebled, infallibly tied To a future of fraud where no fairness abides. Duplicitous liars and crooks on the bench, Hush money, slush funds, and all conscience quenched Where backhanders buy you a piece of the judge, And everyone knows that the law is as judge. <sup>76</sup>
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Following these opening assertions of the Court’s role and function, the narrative unfolds through the judicial statements and testimony of the plaintiff and her respondent as well as the Judge. The parties – a young woman supposed to represent the women of Ireland, and an old man (who volunteers to account for the behaviour of the men of the country) testify before the Court in turn. The young woman, as plaintiff, speaks first, putting her case to the court. She despairs of her unmarried state and the fact that the men of Ireland will not marry or will marry older, to older women and implores to Court for relief.

Cúis do chráigh me is d’fhág me cloíte [...] Ah fuaid an tsaoil seo d’fhírsoth béithe Ina gcailleacha ducha gan cumhdach céile [...] A Cháidh na Carraige breathain go bíogthach Mná na Banba in anacra suite <sup>78</sup>	The pain that has drained all my get-up-and-go [...] Is the number of girls with no hope of a match [...] O your grace! Please consider our feminine case, That the women of Ireland find men a disgrace, <sup>77</sup>
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Responding to the plaintiff, the old man characterises the women of Ireland through their proxy plaintiff as predatory and morally suspect.<sup>79</sup>

Is fíor gur feasach me farairí Fódla Suíte greamaithe ag sladairí ‘on tsórt seo. [...] Is search lem chroí an uair chím im radhairc í, A gradam, a críoch, a poimp ‘s a taibhse <sup>80</sup>	I know or a fact that the men of the nation Are often ensnared by these pros of predation; [...] It sickens by happiness, seeing her strut With her nose in the air, when I know she’s a slut <sup>81</sup>
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His proposal to resolve their complaint offers little to further endear him to the reader nor, one suspects, to the audience in the Court. Rather than addressing the alleged behaviour of the country's men he suggests the abolition of illegitimacy.<sup>82</sup> The plight of the women of Ireland in the old man's account will be served by their complete liberation from marriage and the adoption of free love.<sup>83</sup>

Having listened to the old man's argument, the female petitioner gets to her feet once more to respond to the old man. She berates him for criticising Ireland's women and exposes his own shortcomings emphasising the social and financial desperation which forces women – including the old man's own wife to marry or face destitution.<sup>84</sup> Finally, and most controversially for many audiences, the young woman questions clerical celibacy given the role of marriage in the Biblical texts.<sup>85</sup>

After hearing both parties the Queen rules that the men of Ireland should be beaten if they refuse to marry

Gheimbhimse díreach bhrí chum buaite	I find I'm persuaded by all you have said,
Is feidim id chainste, a chrídeach	[...]
bhuartha	That the offspring of Orla, and Mór and of Medbh,
Siolrach Órla, Mhóire is Mheidhbhe	Are con men and shysters, and phonies and fakes,
An seifteoir caol's an créatúir cladartha	[...]
Achtaimid mar dhlí do bhéithe	Al fighting like mad for control of the shop.
An seacht fó trí gan cuibhreach céile	I therefore establish these laws for your state:
[...]	If he's one year and twenty and still has no mate,
feannaigí a dhrom 's a chom le corda <sup>86</sup>	[...]
	his back shall be flayed with a whopping great
	whip. <sup>87</sup>

The trial ends and poet finds to his horror that he is to be first man to suffer such a fate as the crowd of women descend on him, before he wakes once more in the pastoral scene of the work's prologue.

### ***An Triail***

First produced in September 1964, some 184 years after *CMO*, *An Triail (AT)* is a drama written by Máiréad Ní Ghráda who was raised in a *breac-gaeltacht* (an area whose population contains a proportion of native, daily Irish speakers) in East Clare, near the area where Merriman himself spent much of his life. It is tempting to wonder about cross pollination between these two authors, who were born and lived in such close proximity, albeit nearly two centuries apart and while there is no evidence that Ní Ghráda was directly influenced by Merriman, to assert that she was not at least familiar with the work would be naïve.

Certainly, both works use legal settings to expose the hypocrisy and injustice of the societies in which they are set. Moreover, both works have remained shocking to audiences since their creation. *AT*'s first production, as part of the Dublin Theatre Festival alongside Brian Friel's "Philadelphia Here I come" in 1965 was proceeded by a controversial series of articles in the Irish Times on the treatment of single mothers and following its first performance became a subject of national discussion, prompting letters to the Irish Times.<sup>88</sup> Since then, the work has remained current, and has been adapted for television and radio as well as featuring of the Leaving Certificate Irish syllabus for state exams in the country since 2006.<sup>89</sup>

As with *CMO* the text of *AT*, after a brief prologue, is structured as a trial, with each character called to offer testimony and face cross-examination as they would be in court. The work follows Máire, a schoolgirl, who after falling pregnant outside marriage following an affair with a married school teacher

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is forced to leave the family home. After settling in Dublin Máire moves unsuccessfully between jobs, facing discrimination for her status as a single mother before, driven by desperation, murdering her child and taking her own life.

As the curtain is raised Máire's voice admits to the murder,

Mharaigh mé mo leanbh de bhrí dur cailín í. Fásann gach cailín suas ina bean. Ach tá m'inion soar [...] Ní bheidh sí ina hóinsín bhog ghéiliúil ag aon fear.<sup>90</sup>

I killed my child because she was a girl. Every girl grows into a woman. But my daughter is free ... She won't be any man's obedient little fool.

The Attorney then takes the stage and asks the audience, sitting as jury, to put from their minds what they have heard or read about the case, and to listen instead to the evidence that is presented to them and to give their judgment on that evidence and that evidence alone,

A uaisle, iarraim é seo oraibh – aon ní atá cloister agaibh, nó aon ní atá léite agaibh [...] a chur as bhur n-aigne [...] An príosúnach a bheidh os bhur geomhair tá coir uafásach á cur ina leith.<sup>91</sup>

Ladies and gentlemen, I ask you this – anything you have heard, or anything you have read [...] cast it from your minds [...] The prisoner that will be before you today is accused of a terrible crime.

The Attorney then calls each of the work's characters in turn as witnesses to deliver their portions of the story. Yet, as in a trial, their testimony is not delivered unchallenged. In fact, the narrative presented is striking for its use of the character of the Attorney to repeatedly challenge the narratives the witnesses seek to construct. Máire's brothers Liam and Seán<sup>92</sup> are called to the stand and under cross examination repeatedly assert the blame should not be placed with them for what happened,

Liam: Ach ní ormsa is cóir aon phioc den mhilleán a chur [...] Ní fhéadfainn a bheith ag a sála sin i gcónaí. Ní mise a coimeadaí.<sup>93</sup>

But the blame shouldn't fall on me [...] I couldn't be always at her heels. I'm not her keeper

Seán: Can a d'fhéadfainn a dhéanamh? [...] Tharraing sí siúd náire orainn. Tharraing sí náire shaolta orainn [...] Loit sí an saol orainn.<sup>94</sup>

What could I do? [...] She brought shame on us, huge shame [...] She ruined our lives.

Under further questioning from the Attorney it becomes clear that both of Máire's brothers, far from being concerned about having failed to help their sister, are pre-occupied only with the personal cost of the events to them.<sup>95</sup>

Liam: Bhris Beítí an cleamhnas a rinneadh dúinn. Níor fhéad sí an phoiblíocht a sheasamh

Betty broke the match that had been made for us. She couldn't stand the attention.

Seán: Náirigh sí sinn. Bhí orm éirí as an tsagartóireacht. Ní fhéadfainn aghaidh a thabhairt ar mo chomrádaithe sa choláiste



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She shamed us. I had to leave my training for the priesthood. I couldn't face my classmates

The social worker,<sup>96</sup> and Máire's previous employer all of whom play peripheral roles in the play and who claim to be charitable at first instance are similarly exposed under cross-examination.<sup>97</sup> The previous employers dismissed Máire as soon as they discovered her pregnancy and capitalised on her vulnerability by under-paying her while the social worker dismissed her desire to keep her child, and the details of the birth private as an indication of Máire's "stubborn, headstrong" ("stuacach, ceandána") nature.<sup>98</sup>

The use of cross-examination to unearth a more complex narrative than is initially presented by the characters is perhaps most effectively deployed in undermining the narrative constructed by Máire's mother whose double standards in relation to female sexuality are rather ruthlessly exposed by the Attorney. In the face of the mother's denial of responsibility and complaints of the shame Máire drew on the family the Attorney points out that it is the attention rather than the activity itself which seems to be at issue,

Attorney: Tuairim na gcomharsan is mó atá ag déanamh buartha duit?

It's the opinion of your neighbours you're most concerned about?

Attorney: Fiarfraím duit ar thaispeáin tú grá máthar nó carthanacht chróistaí do d'iníon nuair a bhí sí I dtrioblóid?

I ask you, did you show your daughter a mother's love or Christian charity when she was in trouble?<sup>99</sup>

The audience has at this point been made aware of a further hypocrisy – that Máire's mother attempted to make Máire abort her child in order to spare her family the ignominy of a daughter bearing a child outside marriage.<sup>100</sup>

Nor are the Attorney's own attitudes spared from exposure through the process of cross-examination. Mailí, a prostitute who befriends Máire and offers her and her child a place to live, is one of the few characters in the play whose testimony accurately reflects her actions. However, in questioning her, the Attorney's own dim view of women who express, and use, their sexuality for their own gain is exposed as he implies that Mailí's home was no fit place for a child.<sup>101</sup> It is a stark reminder within the work of the many levels, and the institutionalised nature of the discrimination women faced where they were perceived as using or expressing their sexuality in ways not deemed "appropriate" according to contemporary social mores.

Significantly, the father of Máire's child is never called as a witness during the trial. While this may be because Máire indicates repeatedly during the course of the work that she has never revealed his identity to anyone, the narrative does reveal him to the audience who take on the role of jury from the play's opening. It is thus unclear whether his absence from the trial is a necessary component of maintaining the fiction that his identity remains a secret within the walls of the work, or more significantly (and more temptingly) whether his absence is intended as a comment by the author that fathers in such circumstances were not called to answer for their role or to bear responsibility for their actions.

### Gender and Feminist Legal Theories in the Texts

Given the context of the texts it is now necessary to turn to ask how they can be understood through the lens of feminist legal theory. Certainly, as is clear from the summaries provided above, both texts are centred on primary, female characters who grapple with the absence of female agency that characterises their worlds. Equally both texts use legal settings, dominated by men, to explore the narratives of their central characters, to examine how they have sought to seize the agency denied to them and to highlight

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the consequences which flow from their failed attempts to liberate themselves from the restrictions imposed by their gender.

The reader will recall from the opening portions of this article that McKinnon argues that in the dominance theory of law, the law is designed to facilitate men's sexual access to women<sup>102</sup> as part of a broader social system which is designed to establish and preserve, male power.<sup>103</sup> In the face of this, McKinnon argues that women must seek to establish a new theory of law informed by female experience.<sup>104</sup>

This portion of the article now turns to examine both texts through the lens of this dominance theory as propounded by McKinnon and argues that both texts offer a nascent (though not unqualified) theory of law as a feminist endeavour. In particular, the article argues in this portion that the use of dialogue to interrogate the understandings of truth presented by their characters, the portrayal of thwarted agency and the inversion of traditional institutional schemes used to varying degrees by both works contribute to the creation of narratives which are distinctly feminist in their attempts to re-articulate justice to give voice to oppressed, and female perspectives.

The contrast between *CMO* and *AT* is most stark in its use of courtroom dialogues. The courtroom dialogues in *AT* are central to the work's layered narrative in which the reliability of the various narrators and the accounts they give are constantly questioned. Through this method the more fundamental contradictions underpinning the attitudes of the characters (and the institutions they represent) to female sexuality and agency are exposed.

Through its use of the Attorneys' interjections, the dialogue in *AT* offers the audience qualified narratives where truth is unevenly distributed and uncertain. Sitting as the jury the audience are still limited by what can be known (the most evident example being the absence of the father of Máire's child from the proceedings) and are thus restrained from radical judgments on the relative blame of the parties. Instead the audience is forced to identify a truth which exists between the narratives presented, the hypocrisies exposed on cross-examination and those insights which they receive through individual scenes.

In contrast, in *CMO* the largely unopposed testimony leaves the audience to choose between two opposing and highly oppositional dialogues, and while the old man and young woman contradict each other in turn, the accounts they offer adding little nuance to the narrative presented to the Court. As a result, the Court at the conclusion of *CMO* when asked to choose the successful party – and thus designate their account as the truth for the purposes of the work – is faced with a stark choice between two narratives almost wholly at odds with each other. The audience is, equally, left to parse a narrative defined by its extremes rather than its capacity to expose the more insidious implications of the perceptions and beliefs about sexual expression and female agency that the characters hold. It is tempting to argue that in forcing the reader (and the Court) to make this choice between two stark, and flawed, accounts the work forces a consideration of the flawed nature of the narratives the law presents - and whether the truth which can be identified within such accounts. Yet, by forcing an extreme choice, as part of an already surreal setting, *CMO* risks rendering the legitimate issue of female agency which the work identifies, as ridiculous and extreme as the setting in which it is discussed.

The strength of *AT*, in contrast, is that it succeeds in reflecting one of the central conceits of the legal system namely its human fallibility and the ambiguous allegiance which courtroom narratives have to neatly delineated truths.<sup>105</sup> Decisions in court can be made only on the evidence presented, and the full truth rarely emerges- perhaps not even to the parties themselves. In this respect the structure of both works establishes a basis on which to query whose interests the institution of law serves, and positions the works to examine whether the law – in fact – serves to retrench the dominance of those who designed it, rather than exposing a liberating truth which can alter lived realities.

Using these dialogic methods the works, in their exploration of female agency, echo Judith Baer's sentiment that "women are more vulnerable and more responsible than men, but they are less free."<sup>106</sup>

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Both female protagonists face significant pressure to fulfil their expected gender role - more so than the men of either text who admit they are not similarly pressured in the case of Máire's brothers<sup>107</sup> or have simply shirked their responsibilities, as is the case with the men accused in *CMO* and the father of Máire's child.

In addition to experiencing this enhanced burden, the women of both texts are also more vulnerable where they fail to meet these expectations. In the dialogue of the female protagonist in *CMO* the audience hears not only the prejudices of the character herself in her depiction of other women as undeserving of husbands but also the prejudices of the society of which she is a part.

Similarly, in her plea for a judgment obliging the men of Ireland to marry, *CMO*'s central character presents the audience with a claim implicit in which subsists a deeply practical fear for survival in a world in which single women could have little economic or political existence independent of their male relatives.<sup>108</sup> Similarly, Máire (though admittedly naïve), and her mother, understand marriage as the surest means of securing their own and her daughters' futures.

Mother: caithfidh sé tú a phósadh<sup>109</sup>

He has to marry you

Máire: cuir tú fáinne ar mo mhéar. 'Leis an bhfáinne seo déanaim thú a phósadh' dúirt tú.<sup>110</sup>

You put a ring on my finger. 'With this ring I thee wed' you said.

The apparent lack of remorse, combined with the pride and conviction displayed both by Máire in *AT* and the plaintiff in *CMO* compound their offences in the eyes of the societies of which they are a part. Máire is seen as having brought her end upon herself because she is "stuacach ceanndána" (stubborn, headstrong) while the plaintiff in *CMO* is portrayed as deluded and vindictive.<sup>111</sup> In this respect it is interesting that both characters are portrayed through the narratives offered by others as having forfeited their right to appear as victims because they have violated the rules designated to control their behaviour in society, rendering them acutely vulnerable as a result. As one of the characters in *AT* articulates,

[...] *bhris sí na rialacha.*  
*An té a bhriseann rialacha an chluiche*  
*cailltear ann é*<sup>112</sup>

*She broke the rules.*  
*The person who breaks the rules*  
*loses the game.*

The women at the heart of both texts – driven to their actions by desperation in societies which offer them no other means of redress or escape are condemned for failing to conform to their expected gender roles and are socially and economically marginalised as a result. Both women are also, in the end, helpless to prevent their categorisation by legal and social contexts whose preferences reflect their architects' gender.<sup>113</sup> Máire's stand against the patriarchal institutions she finds herself facing is ultimately self-destructive, and while the plaintiff in *CMO* is vindicated to some extent, her victory is only symbolic – she remains constrained by a system which requires women to seek security through marriage, albeit they will be permitted by the Judge to beat a proposal from reluctant men.

The result is that the complaints of the protagonists in *CMO* and *AT* have little impact on the men or the male institutions against which they are directed. The Attorneys seem unable to contextualise Máire's crime as part of her social abandonment, her alienation from her family, or the antipathy of her child's father. The blame that is laid at the feet of the other characters has little impact on their preferences – her brothers remain pre-occupied with their loss of social status while the father of her child remains aloof from, perhaps even unaware of, the proceedings having denied a wish to even see his child.<sup>114</sup>

In *CMO*, while the male narrator is to be beaten, it is beyond the Court's power to create a system in which women are not dependent on men. The solution suggested by the male protagonist, that women

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should be “as free as” men and illegitimate children welcomed seems unlikely to provide the female plaintiff with the autonomy and security she seeks through marriage, instead imposing additional social costs on women while further freeing the male characters. Indeed, O’Neill has noted this, pointing out that the solution proposed by the old man in *CMO* empowers him and those like him far more than the women he claims to be concerned for – instead placing the women of Ireland in a new and more dependent position.<sup>115</sup>

Meilleadh mar iad le riail gan éifeacht,	Abolish this law that’s the plague of our nation!
Scaoil achodladh gan chochall gan chuibhreach	Release from their bondage both beggar and squire
Síol an bhodaigh ‘s an mhogallfhuil mháiteach,	Be they born in a mansion, or farmhouse, or byre,
[...]	[...]
Fógair féilteach tré gach tíortha,	Free love for us all, for young and for old! <sup>116</sup>
D’óg is d’aosta saorthoil síolraigh. <sup>117</sup>	

Both works starkly illustrate, in their failure to hold to account their central male characters, and their illumination of the disproportionate compliance burdens to which their female characters are subject, the dominance of the male point of view. Yet, what is still more notable is the treatment by the works of the institutional aspect of law and its reluctance or inability to enable the women who are subject to it, to escape the injustices which stem from the strictures of their gender.

Elizabeth Butler Cullingford is perhaps the most explicit in her view of *CMO* as providing a “parody inversion of normal legal practice, a Bakhtinian world turned upside down in which women are on top [... and] desire is sanctioned rather than restrained by law.”<sup>118</sup> Certainly if this view is correct *CMO* represents an example of dominance theory in action – of the traditionally male institution of law, re-orientated to account for the feminine viewpoint. Yet despite Cullingford’s characterisation, the texts are not so clear cut in their institutional articulations or their attempts to give voice to female perspectives.

Heaney thus notes that while he certainly views *CMO* as a distinctively feminist text which contains “a tremor of the future”, in particular in light of its use from Marcus’ translation onwards, as an ally in the war against repressive sexual morality and censorship, it is nevertheless a text which falls short of contemporary views of gender equality.<sup>119</sup> In particular, the characterisation of women in the text as constantly seeking the support and protection of men, despite its subversive intent, sits uneasily with modern readers.<sup>120</sup>

Thus, while it is possible to argue that Merriman was a revolutionary writer it is equally possible to contend that he was a conventional one. Heaney dismisses Máirín de Burca’s more strident opinion of the work as illustrative of the fact that “[m]en cannot write intelligently about women’s oppression” and her description of *CMO* as “sexist rubbish.”<sup>121</sup> In opposing this view, Heaney notes that despite a portrayal that is not without complications for modern readers, Merriman shows remarkable empathy and insight in being able to place himself in the dock and outline the case against the men of Ireland to begin with.<sup>122</sup>

This is, it is argued, the more appropriate view. In particular given that, in as much as the portrayals of women offered by the text are concerned, the genre of the work becomes significant. The woman who testifies to the Midnight Court is idealised, portrayed as overcome by her emotions and suffering from an acute despair that she cannot attach herself to a man.

Is buarieamh suite fíor ‘na féachaint,	For the quarrel behind [her eyes] was hard to
Fuinneamh ‘na radharc is faghaity ‘na súile	conceal.
Is fiuchadh le draighean oilc aighnis fúthu,	Her breast heaved in spasms, confounding her
A caint dá cosc le loscadh léibh,	speech,
[...]	So deep was her feeling, the words beyond reach,
Is í ag greadadh na lámh ‘s ag fáscadh a ladhar.	[...]
Insan uair a ghoil sí folcaí fíochmhar	Wringing the joints of her elegant hands,
Is d’fhuscail osnaí gothaí a cainte <sup>124</sup>	While the tide of her misery flowed down her
	cheek,
	Til finally sorrow allowed her to speak. <sup>123</sup>

The implication of her testimony, which crosses the line into explicit motivation in some places, is that the women of Ireland must be married or be incomplete. Yet similar exaggeration is employed for comic effect throughout – and is the mechanism through which Merriman is freed to articulate controversial and taboo subjects of female sexuality and autonomy through the characters in the work.

This is where the critique of de Burca finds its root. The genre that allows Merriman space to articulate these controversial ideas also renders the work apparently un-feminist in some respects. Most notably, in the closing lines of the work the Court reveals that its version of justice for women means merely a reversal of existing biases to achieve justice at the expense of men – rather than a true equality, a point noted by McKibben in her analysis of the work as an *aisling*.<sup>125</sup> The judgment that the women of Ireland should flog the men of Ireland where they refuse to take up their social responsibility to marry and have children is, at its foundation, little more than a crude inversion of the models of legally sanctioned and gendered violence which characterised the treatment of women in Merriman's own time.

Indeed, from the moment the Queen steps up to deliver judgment and *CMO*'s narrative begins to conclude the writing loses much of its earlier force. While this might be attributable to the natural conclusion of the work, O'Connor has opined that it was intended that at that this point "Merriman would speak through [the Queen], and express his own convictions about life, but something went wrong."<sup>126</sup> Whether and what precisely "went wrong" is not clear though Ó Tuama claims the loss of focus results simply from the fact that Merriman had nothing further to add, lamenting that, in the end, the poem's style hinders Merriman from achieving an appropriately climactic and dark expression of his feelings.<sup>127</sup>

Certainly in its earlier portions the comedic tone of the poem is matched by a strident, if often implicit, critique. However, at its conclusion this latter element falls away with the result that the comedy in the Queen's judgment deflects but cannot quite diffuse the conflict which the preceding verses have established. Heaney put it more evocatively when he stated that through the poems earlier force "an archaic beast has been stirred under the poem's surface and the reader experiences a vague need to see it unleashed into action," a need which is not actualised.<sup>129</sup>

The result is that it becomes unclear whether the author thinks it is laughable that women should be thus treated or laughable that anyone should claim a different system is preferable. As a matter of authorial intention the answer is hard to locate – and perhaps deliberately so given the controversial nature of the topics considered. Indeed, it may be that the extreme inversion of the institutional preferences which is given voice in the Queen's judgment is designed to highlight the existing institutional biases by illuminating the gender-based violence and duress which the law in Merriman's world sanctifies. Indeed, it seems the ending to the work is almost deliberately drawn in a manner which evades an analyst's attempt to articulate it as part of a feminist understanding of justice.

In contrast, in *AT*, though there is no explicit inversion of the institutional structure of the Court within the work, there is a more subtle subversion of the narrative the male Attorneys seek to establish through the trial, and of the understanding of guilt the law seeks to impose on Máire. The combination of the uncertain narratives created through cross-examination, as well as Máire's own voiced lines confessing to the crime at the outset of the work, as well as the occasional scenes revealed to the audience alone of Máire's life before her death expose an underlying context which is more complex than the trial proceedings can hope to articulate. The result, is a dramatic illustration of the shortcomings of the justice system in appreciating the causes and consequences of Máire's actions before and after her crime – and by implication, the inability of a system of law administered by men, to fully comprehend the female experience.

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Both texts illustrate the dominance theory in as much as they use courtroom dialogues to expose the dominance of men in the lives of central female characters who struggle to assert their agency against male institutions. Indeed, the texts are both underwritten by the relationships of their female protagonists to the men they might marry, their language spent seeking to expose (*CMO*) or entreat (*AT*) the central male characters for the treatment the female characters must secure to survive.

In this respect both texts appear to treat the law as having failed to adequately reflect or accommodate female experience (in *AT*), or as seeking to redress the failure of traditional courts to vindicate the interests of women (*CMO*), making it necessary for women to seek to re-create or re-articulate the law in order to accommodate their reality, and perspectives. The texts thus treat the law as a system through which meaning is reflected and constructed, as part of an authorised patriarchal discourse.<sup>130</sup> It is perhaps unsurprising that the central female characters of both texts appear somewhat melodramatic in this context – exposed to the dilemma of the female speaker asked to express through the patriarchal categories of legal language the wrongs they have suffered, they reflect Hardy’s articulation of the difficulty experienced by women in seeking to express their feelings “in language which is chiefly made by men to express theirs”.<sup>131</sup>

This is more starkly reflected in *CMO* where the court system which the audience of the era would have been familiar with was one which was discretionary and decentralised, presided over by local magistrates without formal legal training and in which social judgments played a more dominant role than in the formal, institutionalised system of justice seen in *AT*.<sup>132</sup> This informality, and the lack of cross examination, sets the battle of narratives presented by the parties in *CMO*, supported only by the social standing of the speakers, as a stark struggle between the relative value and authority of male and female narratives. Meanwhile, in *AT*, the male Attorneys, while they appear to undermine parts of the testimony of the characters who come before the Court, ultimately present the audience with a male lens through which to view Máire and her crimes and present the struggles of the central female characters from a male point of view, while deploying the language of the courtroom to bolster its (and their) credibility as a neutral institution.

Ultimately MacKinnon's dominance theory is concerned with precisely this dynamic - why the law has been particularly effective both in devaluing women’s narratives but also how the law has obscured its role in doing so through the deployment of unquestioned assertions of its own neutrality.<sup>133</sup> In this light, the fundamental strength of *AT* in its presentation of a feminist theory of law emerges in the play’s final lines. After confessing her crimes to the audience/jury Máire tries to explain her actions with the simple statement “my daughter is free”<sup>134</sup> in a bleak admission that women are unable to escape living in a system orientated to cater to male experience. In response to a system which denies female agency the text’s dramatic irony lies in Máire’s attempt to liberate her daughter and herself through an act which deprives them both of the very agency she desires for them and condemns her in the eyes of the law.

*CMO* is somewhat more challenging. In his analysis of the poem O’Neill has noted that, in fact, the period of writing was (contrary to the work’s own characterisation) one in which relatively open attitudes to sexuality and pregnancy predominated.<sup>135</sup> O’Neill argues that the poem should thus be understood as a reaction to changing societal order in which social class became more stratified and poorer, landless farmers who traditionally married early struggled to integrate with, and thus became socially alienated from, the landed peasantry who increasingly married later and whose adoption of the dowry system shifted power to landholding, farming males thus affecting gender relations.<sup>136</sup> In this context O’Neill argues that the men on trial in *CMO* are subject to censure not because they are men but because they have offended against the mores of the previous traditional and communal society.<sup>137</sup>

It is not clear that O’Neill’s analysis is entirely correct as a matter of socio-legal history. Dowry systems and the associated power of landowning males had long existed in a relatively similar form in Gaelic society. Moreover, while the system of marriage through the payment of a traditional bride price (*coibhche*) had diminished by the sixteenth century it had been replaced by the payment of a dowry as

early as 1400 in many parts of the country<sup>138</sup> with non-dowry marriage common only until the eighth century, and largely a means of acquiring, secondary wives of low status, and concubines.<sup>139</sup>

In that context, while a delay in marriage may have occurred demographically, and may indeed add an additional class-based element to the narrative presented through the complaints of the characters in *CMO*, the idea that the text represents an attempt to re-assert a previously more equitable distribution of power between men and women in marriage is not supported by legal. Nevertheless, through its fundamental re-orientation (albeit in a surreal setting) of the structure and aims of the Court as matriarchal, and given its recurrent emphasis on themes of female agency and free expression of female sexuality the text is amenable to and offers a vision of a feminist judicial system under McKinnon's dominance theory.

## **Conclusion**

In both texts, broader truths about the limits of female sexual expression and female agency linger beneath the surface of the narratives which are presented – simultaneously simpler yet more elusive than the examples which are given by the characters in the texts. In this respect the works highlight the difficult allure of narrative in both literature and law – creating a line of argument which seeks to remain faithful to truth while simultaneously telling stories which are often mutually exclusive, and are frequently the simplest or more approachable examples of far more complex societal conflicts.<sup>140</sup> It is not only that the narrators in the texts are unreliable, but far more fundamentally, that neither law (as institutionally sanctioned storytelling) nor literature can know the truth with any more certainty than the parties to whom they give a voice.

And yet the institutional venter of the law in both texts demonstrates the potential of the law to elevate courtroom narratives and those institutional and individual forces who articulate them above reproach, crafting the truth society wants to remember into precedents the court cannot forget and constructing narratives of guilt and innocence whose value is, like the narratives established in literature, measured by their endurance.

The danger of this exercise, as both *CMO* and *AT* expose, is not only the erasure or flattening of the truth which such articulation permits but also that the narratives constructed by law can, and do, emphasise the views and experiences of those who write and administer the law. In both texts, this results in a failure to reflect the nuanced reality of the challenges and demands which female protagonists encounter, both in terms of the burden placed on them to align their behaviour with traditional gender roles, and the formal and informal penalties they face where they fail to do so. The result is that the law in both texts “is sung ... in a low pitch” prioritising male viewpoints over female experience, in a way which both authors expose as part of their texts to advocate more and less explicitly for a more nuanced understanding of the dominance of male perspectives in judicial processes.<sup>141</sup>

NOTES

- 1 Ní Ghráda, *An Triail*.
- 2 This is the date given at the end of Aoibheall's judgment though, Ó'Buachalla notes the poem may well have been completed either before or after this date, cited in Ó'Conchubhair, "Brian Merriman's *Daytime Mileu*," xvi.
- 3 Nic Dhiarmada, "Approaching Cúirt an Mheán Oíche", 79.
- 4 On the most prominent translations and their comparative successes and failures see, Schirmer, *The Midnight Court*.
- 5 Ibid., chapter 3.
- 6 Ibid., chapter 2.
- 7 O'Connor, *Brian Merriman: The midnight court*. Official Irish society repaid O'Connor's hostility by banning his translation under the terms of the Censorship Act of 1929, although Arland Ussher's translation and Merriman's poem itself were left untouched. Kiberd, *Frank O'Connor: Critical Essays*, 114–28; Alan Titley, "Interpretation of Tradition," 232. Heaney, "Orpheus in Ireland," 55–6.
- 8 David Marcus, *Cúirt an Mheadhón Oidhche*.
- 9 This is in marked contrast to Woulfe who for all his loyalty to the themes and techniques of Cúirt an Mheán Oíche, Woulfe shies away from the original in one important area, that of sexuality, especially female sexual desire. See, Woulfe, *Cúirt an Mheádhoín-Oidhche*. For a detailed discussion of the treatment of the text by both authors see, Schirmer, *The Midnight Court*, chapter 1.
- 10 Heaney, *The Midnight Verdict*.
- 11 Heaney, "Orpheus in Ireland", 53.
- 12 Power, *Cúirt an Mheán Oíche*.
- 13 Ó'Murchú, *Cúirt an Mheonóiche*.
- 14 Carson, *The Midnight Court*.
- 15 Littleton, "In Search of a Feminist Jurisprudence".
- 16 Crenshaw "Demarginalising The Intersection Of Race And Sex".
- 17 Eisenstein, *The Female Body And The Law*.
- 18 Braidotti, *Nomadic Subjects*.
- 19 Baer, *Our Lives Before the Law: Constructing a Feminist Jurisprudence*, 27.
- 20 Ibid., 2, 151.
- 21 Ibid., 52.
- 22 Ibid., 3.
- 23 McKinnon, "Feminism, Marxism, Method, and the State".
- 24 See Space, "Be Professional."
- 25 Brown, *States Of Injury*; See also Brown, *The Impossibility Of Women Studies*.
- 26 Dworkin and McKinnon, *Pornography and Civil Rights*.
- 27 Ibid.
- 28 Ibid., 135.
- 29 Ibid., 5.
- 30 O'Tuama, *Brian Merriman and His Court*, 67.
- 31 Robert, *The Magic of a Midsummer's Nightmare*.
- 32 Blacam, *A First Book of Irish Literature*, 135.
- 33 Yeats, *Introduction to the Midnight Court*, 5.
- 33 Schirmer, *The Midnight Court*.
- 34 O'Murchú, *I bhFábhar Béithe*; Peaircín, *An Eala Ar a Bhfuaid*, 10.
- 35 Wright, "Merriman's Cúirt an Mheonóiche", 179.
- 36 Ibid., 10.
- 37 Ibid., 12-13.
- 38 Titley and Denvir, "Ag Caint ar Cúirt an Mheon-Oíche."
- 39 Buttimer, "Literature in Irish, 1690–1800," 320, 345.



- 40 CruaIaoich, “The Vision of Liberation in Cúirt an Mheán-Oíche,” 99.
- 41 Eglinton, *Bards and Saints*, 54.
- 42 Buttimer, “Literature in Irish, 1690–1800,” 320, 322–3.
- 43 Connolly, *Divided Kingdom: Ireland 1630–1800*.
- 44 Buttimer, “Literature in Irish, 1690–1800,” 320
- 45 Connolly, “Divided Kingdom: Ireland 1630–1800.”
- 46 Ibid.
- 47 This would lead in 1803, to the repeal of the 1624 Act to Prevent the Destroying and Mothering of Bastard Children.
- 48 Ó Murchú, “Cúlra agus Múnla Liteartha do Chúirt Mherriman”, 169–95.
- 49 Ó Murchú, *Cúirt an Mheon-Oíche le Brian Merriman*, línte 1–4.
- 50 Ibid.
- 51 Carson, *The Midnight Court A New Translation*, 1.
- 52 Ó Buachalla, *Aisling Ghéar*, 704
- 53 Morley, *The Popular Mind In Eighteenth-Century Ireland*, 27; Morley, *The Popular Mind In Eighteenth-Century Ireland*, 9.
- 54 Buachalla, *Aisling Ghéar*, 477.
- 55 Ó Murchú, lines 47–48.
- 56 Carson, lines 69–70.
- 57 Ó Murchú, lines 46–47, 50–53.
- 58 Ó Murchú, lines 63–64.
- 59 Carson, lines 62–64.
- 60 Ó Murchú, lines 65–69.
- 61 Carson, lines 65–69.
- 62 Ó Murchú, lines 77–80.
- 63 Carson, lines 78–81.
- 65 Ó Murchú, lines 70, 75.
- 66 Ó Murchú, lines 121–125.
- 67 Carson, lines 122–132.
- 68 Carson, lines 22.
- 69 Carson, lines 70–96.
- 70 Carson, lines 81.
- 71 See, Buttimer, “Literature in Irish, 1690–1800,” 320.
- 72 See, Schirmer, *Eleven Versions of Merriman*, chapter 1.
- 73 Ó Murchú, *I bhFábhhar Béithe*, 54–55.
- 74 Heaney “Orpheus in Ireland,” 38, 41.
- 75 Ó Murchú, lines 86–92.
- 76 Carson, line 21.
- 77 Carson, page 24.
- 78 Ó Murchú, lines 174–6, 192–3.
- 79 Carson, lines 26–30.
- 80 Ó Murchú, lines 43–31, 435–6.
- 81 Carson, lines 430, 435–6.
- 82 Carson, lines 39.
- 83 Carson, lines 635.
- 84 Carson, lines 673–9.
- 85 Carson, lines 758–829.
- 86 Ó Murchú, lines 863–867, 871–2, 876.
- 87 Carson, lines 863–4, 866–77, 870π72, 876.
- 88 Viney, “No Birthright: a study of the unmarried mother and her child.”
- 89 “A Celebration of Máiréad Ní Ghráda.”
- 90 Ní Ghráda, *An Triail*, 19.

- 91 Ibid., 20.
- 92 Ibid., 40–41, 89.
- 93 Ibid., 24.
- 94 Ibid., 41–42.
- 95 Ibid., 89.
- 96 Ibid., 51.
- 97 Ibid., 45–46.
- 98 Ibid., 51–52.
- 99 In response to which the mother answers ‘She brought it on herself.’ Ibid, 29–30, 89.
- 100 Ibid., 41.
- 101 Ibid., 77–78.
- 102 McKinnon, “Feminism, Marxism, Method, and the State,” 635.
- 103 Also talks about other marginalised communities, and in this respect owes some allegiance to anti-essentialist models, Spade, “Be Professional.”
- 104 See generally, Hunt, “The Theory of Critical Legal Studies”; Ewald, “Unger’s Philosophy”
- 105 Ní Ghráda, *An Triail*, 89.
- 106 Baer, *Our Lives Before Law*, 22–23.
- 107 Ní Ghráda, *An Triail*, 84.
- 108 O’Neill, “A Demographer looks at Cúirt an Mheán Oíche”, 142.
- 109 Ní Ghráda, *An Triail*, 37–8.
- 110 Ibid., 41, 86.
- 111 Carson, 35–37; Ó’Murchú, lines 427–475.
- 112 Ní Ghráda, *An Triail*, 89.
- 113 Whether or not this was an accurate reflection of societal strictures and legal requirements at the time of writing is a separate issue and beyond the scope of this article. See, O’Dowd, *A History of Women in Ireland*, Chapter 8. On the more recent legal treatment of women in Irish public policy see, Finnegan and Wiles, *Women and Public policy in Ireland*.
- 114 Ní Ghráda, *An Triail*, 86.
- 115 Heaney, “Orpheus in Ireland,” 54–5. O’Neill, 137.
- 116 Carson, lines 55–57, 61–63.
- 117 Ó’Murchú, lines 154–157, 162–164.
- 118 McKibben “Courting an Elusive Masterwork,” 75.
- 119 Heaney, “Orpheus in Ireland,” 38.
- 120 Heaney, “Orpheus in Ireland,” 74.
- 121 Heaney, “Orpheus in Ireland,” 74.
- 122 Heaney, “Orpheus in Ireland,” 60.
- 123 Carson, lines 134–166.
- 124 Ó’Murchú, lines 150–165.
- 125 McKibben, *Courting an Elusive Masterwork*, 70, 75.
- 126 O’Connor, *The Midnight Court*, 10.
- 127 O’Tuama, *Brian Merriman and His Court*, 74.
- 128 Ibid.
- 129 Heaney, *Orpheus in Ireland*, 41.
- 130 Finley, *Breaking Women’s Silence*, 890.
- 131 Hardy, *Far From the Madding Crowd*, ch 51.
- 132 On the Brehon law system see, Kelly, *Early Irish Law*, 70. In this context it is interesting to note the predominance of the Common Law ‘warrant’ process features prominently in much Irish poetry, in particular that from Munster in the 1700s. See, McKibben, “Court An Elusive Masterwork,” 71.
- 133 McKinnon, *Difference and Dominance*, 230.
- 134 Ní Ghráda, *An Triail*, 88.
- 135 O’Neill, “A Demographer looks at Cúirt an Mheán Oíche,” 137.
- 136 Ibid., 140.

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- 137 Ibid., 141.  
138 Baer, *Our Lives Through Law*, 26.  
139 Ó Corráin, “Marriage in early Ireland,” 5–24, 17.  
140 Adler, “Before Rosa Parks” 2009.  
141 Gilligan, *In a Different Voice*, 35.

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