

The Juridification of Trauma in Delayed Child Sexual Abuse Prosecutions in Ireland.

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Argument

In historic child sexual abuse cases the Irish courts transformed the psychological notion of trauma (dominion) into a judicial or legal category and that was problematic for a number of reasons, including having the effect of silencing certain complainants.

Outline of paper

- Historic Child sexual abuse cases in Ireland:
Social and cultural context
- How the courts first used trauma/dominion
- Juridification of dominion
- Why this is a problem

Social Context

- http://sluggerotoole.com/wp-content/uploads/2011/07/BrendanSmyth_I_420563t.jpg

Trauma

- Psychological: “A physical injury or wound, or a powerful psychological shock that has damaging effects.”
 - A. M. Colman, *A Dictionary of Psychology* (3rd ed, Oxford: OUP, 2012).
- Cultural: “A culturally potent notion that authenticates suffering by linking present suffering to past violence.”
 - D. Fassin and R. Rechtman, *The Empire of Trauma*, (Princeton: Princeton University Press, 2009)

Cases: NC (1991)

- “There is an understandable natural tendency in many families not to divulge to outsiders any information about sexual offences within the family. Furthermore, when a young girl is subjected to sexual abuse by an older brother she may well be afraid to complain to the police, even if she has unavailingly complained to another senior member of the family previously.”

GG (1994)

In cases in general of sexual harassment or interference with young children, the perpetrator may, if he or she is related to or has a particular relationship of domination with the child concerned, **by that domination or by threats or intimidation, prevent the child from reporting the offence.** The court asked to prohibit the trial of a person on such offences, even after a very long time, might well be satisfied and justified in reaching a conclusion that **the extent to which the applicant had contributed to the delay in the revealing of the offences and their subsequent reporting to the prosecution authorities mean that as a matter of justice he should not be entitled to the order.** (Finlay CJ)

B (1994)

“[The complainant] blamed herself in some ways for the way the abuse occurred and felt ashamed and guilty. **As a direct result of this psychological reaction to the abuse she was unable to report** the matter to an external agency, and did not discuss it with her own mother until she was aged approximately 25 years. This is a classical reaction of abused victims, who feel, that if something so awful happens to them, they must in some way have done something to deserve it, and therefore feel both **guilty and responsible.**” [1994] 3 IR 140, 197 *per* Denham J quoting from the psychologist’s affidavit.

PC (1999)

- 1) Whether, depending on the nature of the charges, the delay was such that despite the absence of actual prejudice, the trial should be prohibited;
- (2) What were the reasons for the delay and whether, assuming the complaint to be true, the delay in making it was referable to the accused's conduct;
- (3) Whether the accused had suffered actual prejudice such that the trial should not be allowed.

The reality of silenced victims

- ***DO'R*** [1997] 2 IR 274; ***PC*** [1999] 2 IR 25; ***SF*** [1999] 3 IR 235, 244;
- ***NP*** [2005] IEHC 33; ***PJC*** [2005] IEHC 98; ***BC*** [2005] IEHC 48; ***RC*** [2005] IEHC 97;
- ***PJC*** [2005] IEHC 44; ***PO'C*** [2005] IEHC 103; ***JO'C*** [2000] 3 IR 478; ***JO'C (2001)*** (27 July, 2001, unreported) Central Criminal Court; ***SA*** [2005] IEHC 262; ***JM*** [2004] IESC 47;
- ***TS***, [2005] 2 IR 595; ***RC*** [2005] IEHC 97.

Analysis?

- Good: Recognition of victims' inability to report.
- Bad: Isolation of responsibility for delay in mind of the complainant or the body (actions) of the defendant; denies power relations: role of rape myths; suspension of the presumption of innocence
- The Disqualification of certain complainants.

Disqualification

- *PC v DPP* (11 March 2005, unreported) High Court.
- *DPP v JO'C* (27 July 2001, unreported), Central Criminal Court
- *PM v Malone* [2002] 2 IR 560
- *TS v DPP* [2005] IESC

Law as mediator of Society's relationship to the past

“Whereas the traumatic character of past humiliations brings us back permanently towards the past, the exemplary dimension of the same events is directed toward the future and regulated “towards justice” ... It is the power of justice to be just regarding victims, just also regarding victors, and just towards new institutions by means of which we may prevent the same events from recurring in the future’- (Ricoeur, 1999.)

Thank you!

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