



# Some reflections on law and gender in modern Ireland

Joanne Conaghan<sup>1</sup>

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## Abstract

This is the text of the keynote lecture delivered at the launch of Black, Lynsey and Dunne, Peter (eds). *Law and Gender in Modern Ireland*. Oxford: Hart, delivered 13th September 2019, Department of Law, Maynooth University, Ireland. The lecture locates the book within the context of rapid, radical transformation in gender law and politics in Ireland, highlighting some of the issues which have been the focus of activism and/or reform. The lecture goes on to outline some of the challenges which arise in the legislative pursuit of gender equality including the tension between respecting agency and choice and curbing exploitative and/or gender disadvantaging practices. Comparisons are also made with legislative initiatives in neighbouring Britain. The lecture concludes with some reflections on the interplay of sex and gender in law and public debate and their embedding in the constitutional creation of the modern Irish State.

**Keywords** Activism · Gender · Ireland · Law · Sex

## Introduction

In 1993, Ms Justice Mella Carrol, the first woman to serve on the Irish High Court, wrote the Foreword to a modest collection of essays entitled *Gender and the Law in Ireland*, edited by Alpha Connolly. Expressing the view that “this is a very timely book” (ix), Judge Carrol went on to call into question the continued relevance of some aspects of the Irish Constitution, commenting that: “It is rightly pointed out that the Constitution adopted in 1937 has not kept pace with social change and still reflects the thinking of that period” (ix). This was of course a time when divorce was constitutionally prohibited, abortion subject to staunch criminal sanction, homosexuality mired in a deep quagmire of legal and cultural repression, and, remarkably, Magdalene Laundries and other institutions dedicated to shaming and punishing women for departing from rigorously enforced, religiously-underpinned norms

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✉ Joanne Conaghan  
joanne.conaghan@bristol.ac.uk

<sup>1</sup> University of Bristol, Wills Memorial Building, Queens Road, Bristol BS8 1RJ, UK

of sexual behaviour, still to some extent in operation. Connolly's publication was timely indeed.

All of the authors in the collection were women and all focused, almost exclusively, on the various ways in which women were disadvantaged by Irish law. This was in line with the scope and direction of feminist legal scholarship at the time. And yet here we are, just a quarter of a century later, and the outlook could not be more different. Many of the concerns which Connolly's volume highlighted, for example, around gender inequality in the workplace or with regard to criminal justice processes, have since been the subject of legal and policy reform. While many of the issues which mobilised feminist activism at the time remain, at best, only partially resolved, their focus has shifted, or perhaps more accurately stretched, to encompass not just the position of women but other groups adversely affected by a legal, social, and cultural regime which has long demanded strict conformity to traditional gender roles. In this most recent, and significantly larger, collection of essays, edited by Lynsey Black and Peter Dunne, and entitled, not insignificantly *Law and Gender in Modern Ireland*, women's concerns continue to warrant attention but so too do issues of sexuality and gender identity. Likewise, the adverse legal position of men also features, as, for example, in Tobin's chapter (103) highlighting the vulnerable position of unmarried men with regard to parental rights. This expanded scope reflects new thinking about matters of gender and sexuality, generating a much wider field of legal scholarship and activism. Black and Dunne's collection rightly recognises that when a gender lens is cast upon law, it is not just women who come into view. Gender, after all, shapes virtually everyone's identity and lived experience; gender is also deeply enmeshed in structures of power and social relational configurations. The very ubiquity of gender is striking, and never more so than in the context of a legal scholarly tradition that has, until recently, been wilfully blind to its presence and effects. This is a point to which I will return.

First, though, let's take a closer look at the contents of this fascinating collection of essays painting a vivid collective picture of recent legal developments in Ireland around law and gender.

## Reshaping the legal landscape

Notwithstanding the pioneering significance of Connolly's earlier collection, rarely, has a publication been more propitiously produced than *Law and Gender in Modern Ireland*. Since 1993, and particularly in the last decade, the laws governing issues of gender and sexuality in Ireland have undergone nothing short of revolution, much of which is the focus of scholarly scrutiny in this new collection. From the constitutional endorsement of same-sex marriage in 2015 (Ryan 73) to the successful campaign in 2018 to repeal the Eighth Amendment of the Irish constitution, leading, in early 2019, to the introduction of new legislation facilitating lawful abortion (Enright 55), not to mention the successful divorce referendum in May 2019 paving the way for further liberalisation of Irish divorce law, such recent radical change in Irish legal and social norms with regard to gender and sexuality has garnered global

attention, helping to mobilise similarly progressive efforts elsewhere.<sup>1</sup> At the same time, we should not be dazzled by these most visible of achievements for they stand upon a foundation of equality-seeking reforms which, over the last 25 years, have slowly and steadily ratcheted up the momentum for change: let us not forget that homosexual acts were decriminalised in Ireland in 1993, that the constitutional prohibition on divorce was removed in 1996, or that, from the late 1990s, anti-discrimination laws were extended to protect gays, lesbians, and other socially disadvantaged groups. All these developments are documented in detail by the 19-strong team of authors featuring in Black and Dunne's collection.

What the editors purport to offer is "an *honest and critical* assessment of the relationship between law and gender in the modern Irish state" (xxvi). And this is precisely what they deliver. This is not a publication which sits on the laurels of recent legislative and political success in the field of gender and sexuality equality. By all means commend, for example, the adoption of a humane and inclusive approach to gender recognition,<sup>2</sup> placing Ireland at the forefront of progressive jurisdictions in relation to transgender rights, but acknowledge too, as Ní Mhuirthile (191) does, that room for improvement remains, particularly with regard to young people and those who identify as non-binary (199–207). Let us welcome the enactment of a raft of new laws to combat violence against women,<sup>3</sup> prompted, in part, by Ireland's ratification of the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), and documented in this volume by Louise Crowley (137), but it would be naïve to think that the phenomenon of gender-based violence has now been fully addressed. As Leahy (3), discussing recent changes in sexual offences law, emphasizes, many of the difficulties with the operation of law in this context, derive from deeply engrained, often unconsciously held social attitudes regarding (hetero)sexual behaviour (17–18). It is not just the law that has to change.

This is not to deny that huge steps forward have been made. Both in relation to gender recognition and measures to combat violence against women; Ireland is in many ways more progressive than its British neighbour.<sup>4</sup> The gender recognition

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<sup>1</sup> For example, the successful campaign in the Republic of Ireland in 2015 to legalise same-sex marriage has undoubtedly added to the pressure on Northern Ireland to recognise gay marriage: "Irish vote prompts same-sex marriage call for Northern Ireland" <https://www.bbc.co.uk/news/uk-northern-ireland-32872929> (accessed on 17th October 2019).

<sup>2</sup> Gender Recognition Act 2015.

<sup>3</sup> Criminal Law (Sexual Offences) Act 2017, Victims of Crime Act 2017, Domestic Violence Act 2018.

<sup>4</sup> Reference to Ireland's 'British neighbour' is complicated by the fact that the UK comprises three jurisdictions for purposes of law-making, Scotland, England and Wales, and Northern Ireland. For the most part, England, Wales and Scotland are well aligned in relation to gender and sexuality laws although Scotland enacts its own legislation and at times has led the way in progressive reform. Northern Ireland is far more conservative continuing, for example, to prohibit abortion and same-sex marriage, both of which are legally recognised in the rest of the UK. Nor does the offence of controlling and coercive behaviour in intimate relationships, enacted in England and Wales by s 76 of the Serious Crime Act 2015 apply to Northern Ireland although steps are afoot to introduce such an offence at the time of writing. One of the effects of progressive activism in the Irish Republic has been to highlight the repressiveness of gender and sexuality laws in Northern Ireland and their lack of alignment with both Ireland and the rest of the UK.

regime currently governing the whole of the UK and enshrined in the Gender Recognition Act 2004 has been criticised for its bureaucratic and pathologising requirements.<sup>5</sup> However, it is far from clear that a looser, self-declaratory system, such as that operating in Ireland, Denmark, and a growing number of other jurisdictions, will find legislative favour across the water.<sup>6</sup> Indeed, a recent UK government consultation on gender recognition reform carried out in 2018 has prompted fierce controversy, yielding a public debate too often characterised by a regrettable lack of tolerance and an unnecessary polarity of views (see generally Hines 2019).<sup>7</sup> Remarkably too, the UK has not yet ratified the Istanbul Convention and after a decade of austerity and swingeing cuts to public services, the institutional infrastructure supporting laws and policies with regard to domestic violence has been all but decimated. With the current, Brexit-induced paralysis in British political and legislative affairs, significant progress on this or indeed on issues of social justice generally seems unlikely in the immediate future.

## Tensions and challenges

Returning the focus to Ireland it must be said that not all the gender-related initiatives recently enacted have been met with unbridled enthusiasm, even within those circles identifying as progressive and/or feminist. There remains considerable contention, for example, as to whether the introduction of new laws<sup>8</sup> to criminalise the purchase of sex (following the Nordic model) is the best way to curb the harms to which those engaged in prostitution may be exposed. In her analysis of the reforms, Bacik (21), while clearly a supporter of this legislative approach, nevertheless acknowledges the criticisms the law has attracted, particularly in terms of striking the right balance between respecting women's agency and protecting them from exploitation (31–34). Similarly, Leahy (3), although welcoming the introduction of a new legal definition of consent in rape law, is rightly critical of the legislative failure to tackle the controversial defence of honest belief in consent (which, it must be said, was addressed by England and Wales in the Sexual Offences Act 2003). In some contexts, indeed, the verdict reached on progress is equivocal at best. For example, Mulligan (117) laments the lack of movement in relation to surrogacy law, notwithstanding the publication of new legislative proposals in 2017.<sup>9</sup> Interestingly, surrogacy is currently under the consideration of the Law Commission of England and Wales, which has come up with some interesting but not uncontroversial proposals (Law Commission 2019). As I understand it, the legal position in Ireland with regard to surrogacy arrangements is troublingly lacking, the ordinary

<sup>5</sup> Women and Equalities Committee (2016, 11–14). For a general overview and assessment of the British Act, see Dunne (2015).

<sup>6</sup> 'Across the water' is an Irish term used to denote mainland Britain.

<sup>7</sup> A government decision on whether to enact further reform is still awaited.

<sup>8</sup> Criminal Law (Sexual Offences Act) 2017, Part IV.

<sup>9</sup> General Scheme of the Assisted Reproduction Bill 2017.

rules of parenthood in family law applying. This places those who wish to become parents via a surrogacy arrangement in a vulnerable position. As Mulligan observes “the birth mother remains the mother forever” (119). By contrast, the UK enacted surrogacy legislation in the 1980s<sup>10</sup> creating a process whereby the commissioning parents, subject to meeting a series of tightly prescribed conditions, can apply to the court after the birth to have parental rights transferred. In practice this has proved to be a slow, cumbersome process, generating unnecessary uncertainty for all parties involved. Yet, it is a version of this approach which is currently being considered in Ireland. The Law Commission of England and Wales is now proposing something a little more radical. Having consulted widely to secure the views of a range of stakeholders, including women who have acted as surrogates, the Commission proposes a new pathway for domestic surrogacies which would allow intended parents automatically to assume parental rights *at birth* as long as certain key requirements regarding the surrogacy arrangement are met (Law Commission 2019, Chapter 8). At the same time, the birth mother would be entitled to a short period after the birth to lodge an objection to the transfer of rights to the intended parents. The Law Commission justifies this proposal in part on the basis that it better respects the choice and agency of surrogates, some of whom have expressed frustration that the law as it stands does not automatically transfer parental rights (Law Commission 2019, Chapter 7). The proposal has nevertheless attracted criticism from some feminist commentators. Thus, Victoria Smith, writing in the *New Statesman*, conjures up visions of Margaret Atwood’s *Handmaid’s Tale* to decry the proposals, arguing that:

The proposed changes in law have the potential to exploit economic pressures on potential surrogates and limit the time frame in which these women might reasonably change their minds. They risk re-inscribing rules that dictate who gets to have babies for themselves, and who doesn’t.<sup>11</sup>

Catherine Bennett in *The Guardian* expresses a similar concern while also critical of the fact that the surrogacy proposals have come from a team of all-male Law Commissioners.<sup>12</sup>

These issues are undoubtedly tricky, posing an apparent clash between giving weight, on the one hand, to choices women appear freely to make and, recognising, on the other hand, that in some cases those choices may be unduly circumscribed by poverty or other pressing need, creating a real risk of exploitation.<sup>13</sup> There are echoes too of the ongoing debate in Ireland about how best to approach the legal regulation of prostitution. The approach which has found legislative favour, as previously mentioned, criminalises the purchase of sex, the object being to deter prostitution by cutting off demand for such services. This contrasts with the previous approach

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<sup>10</sup> Surrogacy Arrangements Act 1985.

<sup>11</sup> Victoria Smith (‘Glosswitch’), “The proposed changes to UK’s surrogacy laws risk creating patriarchy 2.0” (*New Statesman* 10 June 2019).

<sup>12</sup> Catherine Bennett, “Who better than men to rule on the delicate subject of surrogacy?” *The Guardian* 9 June 2019.

<sup>13</sup> To avoid the risk of commercial exploitation of poor women’s bodies, the Law Commission recommend the continued prohibition of commercial surrogacies (Law Commission 2019, Chapter 15).

which effectively criminalised the suppliers of sex, that is, sex workers. As Bacik (21) neatly puts it, the legal regulation of prostitution in Ireland has been legislatively reframed “from public nuisance to private exploitation” (21). Underlying the new law is an assumption that prostitution—the selling of sexual services—is inherently exploitative and deeply harmful, especially to women. This is because it reinscribes gender hierarchies, thereby contributing to greater gender inequality (Coy 2012; Bacik, 32–34). As activist, Mia de Faoite, writing in *The Irish Times*, puts it:

The legislation has gender equality as its founding principle; recognising that buying women and girls to perform sex acts is a form of exploitation and formally recognising that sexual consent cannot be purchased because a power imbalance is immediately introduced.<sup>14</sup>

In opposition to this stance, however, is a view which approaches the regulation of prostitution from the standpoint of those who engage in the trade, that is, sex workers themselves. It may seem strange to some to regard the selling of sexual services as a form of work but that is clearly how it is experienced by many women (Cruz 2020). Again, we confront here a protective legal stance on the one hand with an approach which gives weight to women’s choices on the other. How do we devise a law which protects the vulnerable from exploitation without erasing their agency? This tension between legal protection and individual agency is a recurring theme of gender-focused legislation, with strong arguments invoked by both sides. Yet setting up the debate in this way, as an abstract conflict of opposing principles, one of which must necessarily trump the other, may not be the best way to view matters. An approach which looks carefully at the application of the proposed rule or policy *in a specific context* is surely preferable. This is not to eschew principles entirely but rather to trouble the way in which they can frame and contain debate. Sex workers are engaged in an occupation which comes with risks and some are at more risk than others. We are right to take those risks seriously *and* to consider the implications for gender inequality of prostitution as a social and commercial practice. At the same time, we should not, without very good reason, deny agency to a whole class or group of actors. Looking at the regulation of sex work from the perspective of the objects it seeks to achieve demands an evidence-led, materially embedded approach. Interestingly, a recent report on similar legislation introduced in Northern Ireland in 2015,<sup>15</sup> has found that the effect of introducing new laws criminalising the purchase of sex has been to produce an upswing in demand and supply rather than a downturn (Ellison et al. 2019). The authors of the report rather damningly conclude that the introduction of the legislation “has had minimal to no effect on the demand for prostitution, the number of active sex workers in the jurisdiction and on levels of human trafficking for sexual exploitation” (ibid 167). They go on to acknowledge the fact that their findings diverge from studies carried out on the effect of similar legislation in the Nordic regions but account for this divergence in terms of differences in service delivery: the success of the Nordic model rests on the prevalence of on-street

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<sup>14</sup> *Irish Times*, 28th August 2019.

<sup>15</sup> Human Trafficking and Exploitation Act 2015.

selling whereas in Northern Ireland, most sex workers operate online and indoors (ibid 166). In other words, whether what works in Sweden will also work in Northern/Ireland is, as much as anything, an empirical question, and certainly not one that can be confidently answered in the abstract.

There is another reason for taking a more pragmatic, or as I prefer it, *provisional*, approach to legal dilemmas such as those frequently encountered in relation to gender. Circumstances *change*. Societies do not stand still. We know of course that law often struggles to keep up with the pace of social change but, equally, law can be an instrument of change, can also actually lead the way, not least because legal proposals, particularly those with constitutional dimensions, compel a conversation which people might otherwise choose to avoid. Enright's (55) insightful analysis of the process by which a long campaign of anti-eighth amendment activism slowly shaped the public conversation in relation to abortion law reform in Ireland exemplifies this phenomenon—the opportunities *and* challenges it can generate. And in their concluding chapter, the editors, Black and Dunne (318) reflect more broadly on the interrelationship between legal activism and socio-cultural change. They highlight in particular how legal activism around gender and sexuality issues has “crystallise[d] at moments of cultural and generational shift, not least the receding moral authority of the Catholic Church from the mid-1990s onwards” (321). This brings into view a much wider and even weightier aspect of progressive legal activism in modern Ireland, its ongoing contribution to reshaping a new national identity in which religion is rightfully relegated to the sidelines.

## Gender as a category of analysis

There can be little doubt that social attitudes in Ireland in relation to gender and sexuality have changed quite substantially. Between the Connolly publication, in which law and gender issues were conceived almost entirely in terms of women's inequality, to the publication of the Black and Dunne collection in 2019, we have begun to think about gender very differently. In 1993, gender was still being primarily deployed in legal scholarship and policymaking to signify women's issues. This was a period when, time and time again, the critical scrutiny of feminist legal scholars and activists brought into sharp and often painful relief the continuing legacy of a powerfully patriarchal past. This process is still ongoing in Ireland as the nation slowly come to terms with the appalling extent to which the State failed to protect the rights, to acknowledge the very personhood of vulnerable women and their children. Gallen's (263) account of the mistreatment of women in Magdalene Laundries and Mother and Baby Homes, not to mention the continued use in childbirth of the barbaric medical practice of symphysiotomy, makes difficult but necessary reading. We can be under no illusions about the extent to which Irish women have suffered as a consequence of State-sanctioned, often religiously fomented misogyny.

Yet, there is much more to the interface of gender and law than discrimination against or mistreatment of women. What we see in the expansion of feminist legal engagement to encompass the rights of lesbian, bisexual gay, transgender, and intersex people is the deployment of 'gender' not simply as a signifier of identity but

more importantly as an analytical tool with which to interrogate law and legal outcomes. This foregrounding of gender constitutes the methodological core of feminist legal scholarship (Conaghan 2017). It is a conscious reversal of what is often assumed to be a standard operating presumption in legal scholarship, namely that gender is *not* analytically relevant, except in so far as it revealed to be so contingently by the application of conventional legal analytical techniques. By looking at law through a gendered lens, feminist and queer scholarship is not committing itself to a position that gender is *always and necessarily* a category of legal significance; rather it proceeds on the hypothesis that it is likely to be to see what insights this may produce. Consider, for example, Donnelly's (173) analysis of the Irish financial crisis. We would not immediately see this as a gender issue. And yet when Donnelly casts her gaze, a number of interesting insights about the gendered impacts of the financial crisis come into view, particularly with regard to the legal and practical difficulties faced by one spouse or partner as a consequence of the indebtedness of another, what Donnelly and other scholars in her field refer to as "sexually transmitted debt" (174–176).

This, by the way, is another feature of an analytical approach to law which takes gender as its point of entry: it leads to the generation of new concepts. 'Sexually transmitted debt' captures a concern about financial regulation which might otherwise go overlooked, forcing us to view an issue from a different angle. 'Sex work' is another feminist engendered concept, challenging us to confront the fact that many sellers of sexual services experience the transaction as a form of *work* and view themselves as *workers*, entitled to rights or recognition as such. The point about these concepts is not that they are better than more conventional frames but rather that they force us to think outside the parameters of language and discourse already set. For this reason, they are likely to produce insights capable of enriching our understanding of and ability to respond to the kinds of legal and policy dilemmas I have been highlighting here.

Deploying gender as an analytical tool also allows us to see clearly the conceptual and ideological links between the unequal position of women in law and society and the disadvantages which have traditionally accompanied gay, lesbian, and transgender status. In all these contexts, gender is the unifying thread, defining women's social role in relation to men, imposing upon men and women strict norms of gender-conformity, and denying the possibility and/or propriety of gender norm-transgression or eschewal. We might view the social structures, processes, and relations which gendered norms and divisions generate as making up a 'gender regime'. Anthropologically speaking, gender-based norms and divisions are present in virtually all societies. Gender operates as a form of social ordering, shaping how society is organised and how it operates. However, how gender is apprehended, how gendered subjects are formed, gender relations established and regulated, will vary from society to society, and even within a single society at different points in time. In other words, the nature of the gendered order or regime is dependent on what notion of gender is in play and how it is mobilised. Think about the deployment of gender in grammar as a way of classifying linguistic phenomena into separate groups. This reflects the etymological origins of the word, which derives from the old French *gendre* and the Latin stem, *genus*, meaning "kind or sort". Of course, the primary



understanding of gender today is as an extension of, supplement to, and sometimes synonym for 'sex', but reflecting on gender's etymological origins draws attention to how the term *functions*, that is, as a way of classifying phenomena in accordance with some socially agreed system of distinctions. And what is socially agreed may undergo change.

## Sex and gender contestations

Some people contend that 'gender' should be deployed in contradistinction to 'sex', so that sex is used to designate biologically based differences between men and women while gender signifies socially contrived, eminently contestable distinctions (see, for example, Green 2011, 4). Even here though the lines begin to blur because how we perceive biology is also inevitably socially and culturally imbued. Until the eighteenth century, for example, the scientific apprehension of women's bodies was to view them not as different from men's but rather as poor, somewhat defective replicas, what Laqueur refers to as a "one-sex model" (1990, 25). This perception of biological imperfection helped to justify women's inferior social status, producing a social order in which sex was conceived hierarchically and difference predicated on gendered social roles. As Laqueur puts it: "To be a man or a woman was to hold a social rank, a place in society, to assume a cultural role, not to *be* organically one or the other of two incommensurable sexes" (1990, 8). Laqueur goes on to trace the emergence of a new understanding of sex during the course of the eighteenth century, what he calls the "two-sex model", corresponding with the dominant cultural understanding of sex today (*ibid*). This change in perception partly came about as a result of advances in scientific knowledge, bringing a new understanding of human anatomy to bear on apprehensions of corporeality. Within this context, women's bodies were increasingly seen in opposition to men's, as different rather than defective, a view which resonated with emerging ideas of sexual equality while simultaneously supporting the view that sexes should occupy distinct social spheres.

The point I am making here is that over time and space our conceptions of gender *and* sex have changed and that neither is left untouched by social and cultural norms. Fast forward to the twenty-first century where an increased understanding of intersex, of how hormones contribute to corporeal formation and development, of the mutability of biological features and processes previously understood as fixed and immutable all call into question perceptions of sex as natural and unalterable. The possibilities opened up by new frontiers of knowledge about sex and gender cannot be unthought. Gender and sex continue to be at the forefront of our ideas about self; they continue to shape and mediate relations of power, but how we apprehend and mobilise gender *and* sex has become increasingly contested in public debate. Take the question, what is a woman? Historically, what constitutes a woman has been variously anchored in biology (the two-sex model) and social convention (the one-sex model). While at different times, different conceptions have dominated, sex and gender have continuously colluded to produce ideas of femininity and masculinity: what constitutes a woman then has always been a matter of contestation to some degree.

## Gender constitutionalised

The 1937 Irish Constitution is the perfect exemplar of this entanglement of sex and gender, harnessing women's wombs to limit the scope of their social and political status. This process of constitutional gendering is highlighted in Brady's (211) fascinating analysis of the incorporation of sex/gender categories directly into the constitutional text so that the gender regime of the time became perpetually enshrined in the newly created postcolonial Irish state:

The State recognizes that by her life within the home, woman gives to the State a support which the common good cannot be achieved (Art 41.2.1).

There is something quite remarkable about this provision, notwithstanding its overt sexism, in that it formally recognises the contribution of women's reproductive labour to the public good. This curious linkage of domestic (private) and political (public) arrangements lays bare the significant role played by a highly traditional gendered division of labour in constituting the modern Irish State. The provision which follows is of equal interest:

The State shall therefore endeavor to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home (Art 41.2.2).

While women are constitutionally charged with carrying out their domestic duties, they are encouraged here to expect economic support for their efforts, from which we can surely infer constitutional acknowledgment that women's work in the home has economic value. Again, this provision stands in stark contrast to conventional economic assumptions predicated on the non-productive character of housework. Unfortunately for Irish women, neither the Constitution nor the Irish State has introduced formal legal mechanisms to ensure that women's legitimate expectation of support is realised. One debate currently going on in Ireland and considered, *inter alia* by Brady, is whether to recraft this constitutional provision (and/or its interpretation) in gender-neutral terms, thereby preserving the constitutional endorsement of unpaid care work while disassociating it from gendered social roles. This effort to 'reconstitute' care work has some merit but is not without risks. Removing gender from the letter of the Constitution may simply obscure a gendered division of labour rather than disrupt it. My preference therefore is to jettison Article 41.2 entirely, to reimagine an Irish State that is no longer predicated upon a constitutionally enshrined, heteronormatively grounded social order.

It is fitting perhaps that, as we approach the centenary of the birth of Modern Ireland, we feel confident enough to cast a critical eye over the circumstances of our becoming as a self-governing, independent nation state. Within this broader context, and given the foundational role accorded to gender in the making of the Irish State, it is right that we remake gender *and* Irishness to reflect and promote the values, dreams, and aspirations of the modern Irish citizenry. As someone who was born in the British governed North of Ireland, and has grown up with a somewhat uncertain sense of my precise relation with the Irish Republic, and indeed Irishness,

I am particularly interested in this ongoing process of reshaping the character and contours of Ireland in the twenty-first century. Within that context, I am grateful to the editors and contributors of *Law and Gender in Modern Ireland* for offering such an expansive, rigorous, yet wonderfully accessible analysis of gender in Irish law at this pertinent moment in Irish history. There is a lot to be learned from Irish legal scholarship and activism around gender, particularly given the common law heritage it shares with so many other jurisdictions. The recent Irish experience offers a valuable testing ground for tracking the processes by which activist-led law reform campaigns become translated into formal legislative enactments and concrete lived rights. For this reason, as well as many others, I commend this book to you and congratulate the authors and editors on a truly fine scholarly achievement. Thank you for inviting me here today and for your attention.

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