

Law and Gender in Modern Ireland

Critique and Reform

Edited by
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Conclusions and Analysis

LYNSEY BLACK AND PETER DUNNE

I. Introduction

This edited volume has explored the relationship between law and gender in modern Ireland. Addressing 17 distinct, yet inter-related, areas of the Irish legal system, and drawing upon a wealth of academic and practitioner expertise, this book assesses – 25 years after the last major scholarly intervention – gender-based reform and the lived-experience of law in twenty-first century Ireland.

In some ways, this book serves as a cause for celebration – acknowledging important rights advancements in fields including reproductive justice, LGBT protections and the sexual exploitation of women. Yet, as the various contributors have illustrated, modern Irish law continues, at core junctures, to operate through deeply-engrained gendered inequalities, restricting access to and enjoyment of key entitlements. From stereotype-framed employment rules to gender-insensitive family protections, and from the legal erasure of vulnerable demographics (transgender children, unmarried survivors of domestic violence, etc) to the invisibility of women in public spaces, the Irish legal system remains, in key respects, characterised by the failure to acknowledge and presently redress historic gender imbalances.

In this concluding chapter, the editors offer conclusions on the foregoing discussions and debates. The chapter is not an extensive overview of the various contributions, nor do the editors propose recommendations for the transformation of Ireland's legal framework. Rather, identifying common themes and recurring questions across the 17 chapters, the editors engage in a holistic analysis of the current (and evolving) relationship between law and gender in modern Ireland.

II. Activism and Cultural Change

A clear thread, running throughout the volume, is the impact of activism-led movements in achieving social change. In recent years, there has been sustained, organised and impassioned activism, leading to tangible legal reforms in Ireland. Such movements are perhaps best illustrated by the work of advocates in the 2015 Yes Equality campaign for same-gender marriage (discussed by Fergus Ryan) and the 2018 Together for Yes campaign to remove the '8th Amendment' (discussed by Máiréad Enright). Both of these movements – fuelled and

sustained by (years of) grassroots activism – speak to the power of people and community-led advocacy in creating substantive reform in Irish law.

The various contributions to this volume document the achievements of activism-based campaigns. Their successes signal a changed (and changing) Ireland, different in many respects from the country that existed 25 years ago. Activist campaigning has been central to the changes, which have taken place over recent decades. These movements have emerged from shifts in public discourse and have also helped to drive it. While reform cannot occur in an environment of absolute hostility, activism has allowed small opportunities to be translated into societal momentum. Feeding into the successes of activism, the role of investigative journalism, in facilitating the voices of victim-survivors, as well as the resources and efforts of non-government organisations (NGOs) and academics, have come together in various coalitions for progressive reform, joining research with passion.

James Gallen's analysis of the redress schemes, established in response to historical mistreatment, highlights a masterclass in activism. Gallen cites the efforts of the groups, which brought historical gendered abuse into the political foreground. Organisations such as Justice for Magdalenes and Survivors of Symphysiotomy have compiled victim-survivor testimony, often carrying out their own research where no such efforts were forthcoming from successive Irish governments. In his chapter, Gallen emphasises how the State was, and remains, resistant to many of the arguments made, and has been wary of expansive interpretations at every turn. For example, the Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries (the 'McAleese Report') pitted institutional Catholic Church accounts against victim-survivor memories, creating a deeply unsatisfactory document. Similarly, victim-survivor testimony was downgraded in the report of Maureen Harding Clark J in the case of symphysiotomy.

Activism not only creates the optimal conditions for action; sometimes it is the only means of achieving State recognition of mistreatment. Crucially, State recognition builds slowly from public awareness, and public disquiet. In cases, such as those examined by Gallen, it is clear that activism was a necessary alchemy, and continues to be so in the face of official obstruction. Activist groups have been crucial in amplifying the voices of women where reluctant government approaches have consistently minimised their voices. Activism has, therefore, been particularly necessary to ensure that the gendered harms of Ireland's past, and present, are recognised.

Ivana Bacik's chapter on prostitution and sex work reminds us, however, that activism does not proceed from a monolithic ideological position. Bacik highlights the role of activism in driving debate and law reform on the legislation governing prostitution. She cites the importance of 'Turn Off the Red Light' (TORL), a campaigning coalition comprised of various organisations in support of the 'Nordic model' (discussed in detail in Section VI below). These campaigning groups found favour with government actors, who recognised the need for reform. Similarly, NGOs, such as Ruhama and the Immigrant Council of Ireland, offered a campaigning platform, as noted in Monica O'Connor and Nusha Yonkova's chapter on trafficking for sexual exploitation. On the other hand, however, organisations, including the Sex Workers Alliance Ireland, prefer an alternative approach, focusing on harm reduction and labour rights. The often-divisive nature of the debate on this issue was brought into clear focus when the International Council Meeting of Amnesty International, meeting in Dublin in August 2015, voted to decriminalise sex work and prostitution, as well as voting

for the decriminalisation of the purchase of sex. Amnesty's current policy is therefore in conflict with the Irish Government approach, and with the Criminal Law (Sexual Offences) Act 2017.

Division among activist communities can also be seen in Fergus Ryan's contribution on sexual orientation rights – particularly during the debates surrounding passage of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 ('2010 Act'). As Ryan notes, while many – perhaps more established and institutionally situated – advocates favoured the incremental rights development, which civil partnership would guarantee (particularly for those same-gender couples who, for various reasons, were in need of immediate protection), other community members, particularly among younger populations, rejected civil partnership as legally enshrined second-class citizenship. In many ways, the divisions over the 2010 Act were more complex than the competing positions adopted in the sex work and prostitution debate. While, in the latter discussions, as Bacik explains, the various activist groups advocated different substantive outcomes (most obviously, in the legal consequences for individuals who purchase sex), both sides of the civil partnership debate were ultimately looking to achieve the same thing: marriage equality. However, while some organisations and individuals preferred a more cautious, developmental strategy, other lesbian, gay and bisexual (LGB) persons believed that accepting anything less than immediate marital rights would be an impossible compromise.

Ryan's discussion of intra-community disagreement among LGB activists may be contrasted with the (at least publicly) more united front presented by trans activists during legislative campaigns for legal gender recognition, as described by Tanya Ní Mhuirthile. Despite the multiplicity of experiences of gender which are visible within Ireland's trans community, those advocating for, and advising on, the Gender Recognition Act 2015 presented a clear, consistent message in terms of the appropriate (and necessary contours) of legislative reform. In many ways, this uniform approach both assisted parliamentarians in understanding the requirement to formally acknowledge preferred gender, and removed possible ambiguity as to what gender identity rights would be acceptable. Although debates on the 2015 Act may have lacked the diversity of opinions identified by Bacik and Ryan in the spheres of sex work and civil partnership, there were key strategic advantages where all stakeholders for the 2015 Act – political, civil society and grassroots community – pursued a common, agreed goal.

Activism can also crystallise at moments of cultural and generational shift, not least the receding moral authority of the Catholic Church from the mid-1990s onwards. A notable example of changing culture can be seen in the 'The 5050 Group', which campaigned on women's political representation. This movement led ultimately to the Electoral (Amendment) (Political Funding) Act 2012, which introduced a gender quota system into Irish national politics. Fiona Buckley and Yvonne Galligan document a moment of change in Ireland in the wake of the 2008 financial crisis. In this climate, the 'cute hoor' mechanisms of Irish politics became unpalatable to many and gender quotas enjoyed support in an atmosphere of demands for increased transparency.

The role of individuals as lightning-bearers should not be ignored. Both Ryan, and Buckley and Galligan, reference the symbolic importance of the election of Mary Robinson as President of Ireland in 1990. Her gender and her noted credentials as an advocate for progressive causes, offered a visible marker of a sea change in Irish society. Similarly, and in more tragic circumstances, Savita Halappanavar – a young woman who, in 2012, died after

being initially denied abortion-related medical services in an Irish hospital – became (and remains) a potent symbol for the need to acknowledge and expand reproductive rights.

The past two decades have shown the critical part which activist-litigation (particularly strategic litigation) can play in facilitating, and building upon, social change. This is nowhere more evident than in the case of *Zappone and Gilligan v Revenue Commissioners*, which brought the issue of same-gender marriage into many Irish homes for the first time. Public litigation can raise the profile of marginalised groups through compelling personal stories. James Gallen explains how litigation was a particularly effective tool for breaking ground in bringing the harms of symphysiotomy to greater public notice. Similarly, as Tanya Ní Mhuirthile acknowledges, it was Dr Lydia Foy's two decades of litigation against the Irish State (often in the face of overwhelming media hostility) which raised Irish public consciousness on trans-related issues, and created the framework (and the legal obligation) for the Gender Recognition Act 2015.

In some situations, litigation (even if it does not provide a desired remedy) can expose legal and social inequalities of which the wider public are either unaware or towards which they have shown historical ambivalence. In her contribution on 'sexually transmitted debt', May Donnelly investigates recent case law from the 2008 financial crisis. The judgments examined often involve women who, in guaranteeing (sometimes without proper knowledge) their male partners' businesses and property speculation, are placed in positions of extreme financial vulnerability. While, in many cases, the Irish courts were unwilling to accept the women's defences to actions brought by financial institutions, the judgments are nevertheless an important mechanism through which to highlight troubling commercial and family-based practices, which, even in 2018, continue to disproportionately burden women.

Social media sites, such as Twitter and Facebook, have been central to activist discourse on gender in Ireland. Online media services – both commercial and personal – have played, and continue to play, a key role in encouraging and shaping legal reform in this jurisdiction (as illustrated by disagreements over access to, and use of, social media advertising during the 2018 referendum to remove the '8th Amendment'). In particular, social media developments offer an important platform for ordinary citizens – many of whom who have been historically shut out from political and legal discourse – to share their personal narratives, and to shape ongoing reform debates. The democratising potential of online resources has been clear visible in recent legislative and constitutional debates, as Máiréad Enright (repealing the 8th Amendment), Fergus Ryan (same-gender marriage) and Tanya Ní Mhuirthile (gender identity) make clear. Of course, however, social media is not an absolute social good. For women, in particular, online spaces can represent a dangerous, even oppressive, environment. However, overall, as the various chapters reveal, social media has played a crucial (mostly positive) role in facilitate progressive social change, and has created a space in which individuals – irrespective of position or status – can share and control their own stories.

III. Consent and Agency

It is impossible to consider the themes which have emerged from a review of gender and the law in modern Ireland, and not situate 'consent and agency' front and centre.

As a lens through which to view the legal frameworks on gender, these are essential concepts – encompassing ideas of autonomy, of personhood, and of citizenship on equal terms – that are inextricably linked to this endeavour.

In Susan Leahy's chapter, these issues are addressed explicitly. In her consideration of sexual offence law in Ireland, Leahy focuses on consent. This has two effects: it illuminates one area of the law on sexual offences, and it acts as a cipher for the knotty questions of women's position in Irish society. As Leahy outlines, consent was not positively defined in Ireland until 2017. The new legislation has introduced ideas of communicative sexuality and mutuality into the Irish law for the first time. However, the definition of consent continues to orient around the idea of force. This can be used to exemplify some broader issues around consent and agency, such as the impact of context and circumstances on decision-making, which require us to ask whether consent has been freely given. Leahy also criticises the failure to reform the 'honest belief' defence, which again can be used as an example of wider issues. Consent and agency are essential in identifying the point at which male perspectives assume dominance over the female perspective. Not only are there limits to the extent to which female consent can be tolerated, but these are explicitly provided for in law.

While Leahy examines the nature of consent in its substantive form as a matter in sexual offence trials, other contributors consider more abstract meanings of consent and agency. Ivana Bacik delves into the idea of consent and agency fundamental to the debate on the nature of prostitution/sex work. Under a radical feminist perspective, prostitution is exploitative and evidence of oppressive gender hierarchies. In this conception, women's agency to consent is restricted by their economic and social circumstances. However, under the competing sex work perspective, such choices are emblematic of agency. Bacik's argument in favour of the former emphasises the need to recognise the role of structure over a neo-liberal prioritisation of individual choice.

Monica O'Connor and Nusha Yonkova offer comparable analyses of consent and agency in their discussion of trafficking for sexual exploitation. Again, the authors note that the lived-experience of trafficked women cautions against viewing their actions within the terminology of choice. The reality of trafficking for prostitution is that 'consumers' – mostly men – ignore signs of coercion, and may react negatively to indicators that women are not participating voluntarily. This invokes the spectre, and indeed the reality, of further violence. Within these scenarios, there is a further layer of meaning, in which women feign consent and agency to avoid physical repercussions.

In a consideration of consent then, should there be a dual-pronged approach to analysis. In the first instance, can we say there is express consent? Second, however, even in cases of explicit consent, is the consent voluntarily given? This approach goes further in ensuring that agency is acknowledged. In particular, in the chapters from Bacik, and O'Connor and Yonkova, the need to look beyond the visible indicators of consent is necessary. In the context of sexual exploitation in a globalised world, issues of power differentials, and of class position, ethnicity, race and nationality complicate any simplistic definition of consent.

One of the areas in Irish law where consent has historically been denied is consent regarding bodily autonomy during pregnancy. The inability of Irish women to make decisions about their bodies during pregnancy had long constituted a serious human rights failing, creating the context of unwanted pregnancy and forced birth, as well as the need for women to leave the jurisdiction to avail of healthcare abroad. While 'care' and 'compassion' may have been the most obvious and frequently used terminology in the referendum

to repeal the 8th Amendment, that public vote was – at its core – a symbolic recognition of women’s right to make autonomous, agentic decisions about their own bodies and futures. In the wake of the May 2018 referendum, that focus on choice and agency has now been (largely) enshrined in subsequently adopted legislation, which permits individuals to access terminations without restriction before the twelfth week of pregnancy.

The case study of abortion is illustrative of a wider historical failure in Irish law and society to prioritise women’s agency. As James Gallen notes in relation to consent for medical procedures, there have tended to be more highly valued imperatives, namely, the preservation of women as child-bearers. Symphysiotomy, which was widely used in Ireland in the 1960s and 1970s, was preferred as an alternative to Caesarean sections, which were considered a risk to potential future pregnancies. The procedure was often carried out against the standards of best practice and contrary to the interests of the patient, and many women experienced harmful effects. Gallen also demonstrates the futility of consent in circumstances which offered no good alternative. Within an Ireland in which the stigma towards illegitimacy was overwhelming, and which offered no State support which could have made such a life bearable, the decisions made by some women to avail of institutional support cannot be considered, uncritically, as voluntary.

In contemporary settings too, there are often problematic issues relating to agency and consent in the domestic sphere, as demonstrated in Mary O’Toole recounting of female experiences at the Irish Bar, Mary Donnelly’s analysis of sexually transmitted debt, Deirdre McGowan’s examination of marriage breakdown, and Alan DP Brady’s discussion of constitutional frameworks on the family. Women’s relative lack of financial autonomy in such settings results from the gendered legal regimes, as well as cultural and social norms. Lucy-Ann Buckley’s examination of the protective leave framework throws further doubt on the issue of women’s agency, and ‘choice’, in a legal structure which pushes women into child-caring roles through heavily gendered leave entitlements. These factors create a dilemma; it is often a mistake to assume agency, as women’s role in marriage and the family has been heavily constrained, however there are many voices critical of such an approach who decry what they see as the victimhood of feminist arguments. However, why is there an assumption that women are free actors in such cases when a review of structural determinants would suggest otherwise? We are compelled, then, to critically interrogate what we mean by consent and agency.

Such critical analysis is particularly relevant for ongoing debates relating to the regulation of surrogacy practices in Ireland. As Andrea Mulligan notes in her contribution, an especially pertinent critique of surrogacy industries is their potential exploitation of vulnerable – financially and socially – women. In many surrogacy cases, the individuals who are commissioning the arrangement enjoy disproportionately higher levels of privilege than the women who gestate their children. Against that background, there is a fear that disadvantaged women may be unduly influenced by their financial circumstances to compromise their bodily autonomy – thus bringing into question the validity of the consent which these women offer for the surrogacy arrangement. In response, Irish policy-makers have sought to institute a number of safeguards into the proposed surrogacy legislation, which are intended to curb the potential for exploitative arrangements. Perhaps most importantly, any Irish surrogacy framework will operate – like the current law in the United Kingdom – on an exclusively non-commercial basis. Those seeking to create a surrogacy agreement with a gestational mother in Ireland will be legally barred from purchasing those services through

a financial transaction. By removing financial incentives from any proposed surrogacy regime, Irish policy-makers hope to avoid (or at least minimise) situations where commissioning actors are effectively ‘buying’ the consent of women who subsequently gestate their children.

IV. Recognising Gender

One of the difficulties in finding justice at the intersection of gender and the law, evident throughout this volume, is the problem of ostensibly gender-neutral laws, which perpetuate gender injustice. Throughout the contributions, examples of laws which failed to recognise a ‘gender reality’ often imposed a ‘gender harm’. In such instances, these failures to reflect lived-experience perpetuated and compounded the discrimination experienced. By failing to acknowledge the gendered characteristic of social phenomena, we cannot innovate policies which respond to the lived-experience of individuals. Issues such as trafficking for sexual exploitation, prostitution and sex work, sexual offences and domestic violence have strikingly gendered profiles, and the victims are overwhelmingly women and girls. However, the fact that gendered power differentials are often left unexamined can reveal powerful vested interests. As Alan DP Brady argues in his discussion of *Re Article 26 and the Matrimonial Homes Bill 1993*, gender neutrality can protect the status quo. Although the status quo in this case was expressly more favourable to men, this state of affairs was viewed as ‘natural’, and beyond the scope of legislative interference.

In her chapter, Ivana Bacik presents prostitution and sex work as an example of a fundamentally unequal gender regime, and argues that any legal framework imposed must reflect the reality of that situation. Similarly, in Monica O’Connor and Nusha Yonkova’s analysis of trafficking for sexual exploitation, the authors again point to the research which demonstrates that, overwhelmingly, it is women who sell sex, and men who buy sex. O’Connor and Yonkova are emphatic in their recommendation that laws governing trafficking should not be gender-neutral and are highly critical of the current legislative schema which fails to recognise the reality of trafficking. The authors suggest that this failure stems from the controversy over prostitution and sex work, which the EU is unwilling to face. Therefore, there are clearly barriers to reflecting sex work as gendered exploitation, and therefore to embedding gender in the law itself. Meanwhile, the existing European and Irish legal provisions cannot contemplate, and do not speak to, the intractable links between gender, migration, trafficking for sexual exploitation, and prostitution and sex work. In her discussion of gender within Ireland’s asylum framework, Patricia Brazil similarly observes that, while women and young girls experience unique vulnerabilities and dangers when they travel across borders to flee persecution, Irish law (and its application) has, on the whole, been incapable (or unwilling) to address the gendered dynamics of asylum.

Fiona Buckley and Yvonne Galligan turn the spotlight on one recent legislative innovation in Ireland which seeks to explicitly reintroduce the reality of gender into the law. Discussing the Electoral (Amendment) (Political Funding) Act 2012, which introduced gender quotas, the authors itemise the gender disadvantages which can accumulate in gender-blind regimes. Although prior to 2012, there were no direct barriers to women’s involvement in politics, between 1918 and 2016, only 114 women were elected to Dáil Eireann,

compared to 1,181 men. Despite the presence of obvious obstacles then, women were not participating in the public life of the country to anywhere near the same extent as men.

Additionally, the authors outline the political culture in which women found it harder to make inroads. The informality of processes created barriers to women's participation, a phenomenon which Mary O'Toole also cites as obstructing the progress of women within the Irish legal profession, particularly within the Law Library. Compounding this the problem of Ireland's political culture, Buckley and Galligan further highlight how Ireland's multi-seat constituencies also privileged localism. While routes to candidacy for men often included local council membership, women's representation on local councils never exceeded 21 per cent. These features were exacerbated by the power of incumbency. Incumbents tended to have much higher chances of success, a system which perpetuated the gender representation skew. Further, candidates must draw from a deep well of resources, time and money, which can be difficult for women who are more likely to have caring responsibilities.

When women do put themselves forward, Buckley and Galligan note that they often face criticism and challenges relating to their qualifications. The authors suggest that this exposes the acceptance of 'Man' as the archetypal politician, an entitlement flowing from gender, which women must fight to achieve. The political landscape demonstrated how gender neutrality in the law created the misleading assumption that women's lack of representation was just an unfortunately gendered outcome of a meritocracy. Instead, gender blindness was privileging male experience, and ignoring the structural barriers to women's participation in public life. Again, this phenomenon is also evident in women's experiences of the Irish legal profession, with Mary O'Toole observing that, in order to access even baseline opportunities, female practitioners must achieve noticeably higher standards than comparably situated male colleagues. There is also an unwillingness among male legal professionals to even acknowledge that such differentiation exists, reproducing the troubling myth that formally equal professional frameworks are sufficient to create substantively equal opportunities for women. On a positive note, however, Buckley and Galligan point out that, in the general election of 2016, the first since the legislation was passed, there was a 90 per cent increase in the number of women candidates contesting the general election, which led to a 40 per cent increase in the number of women TDs.

The fact of gender injustice is evident in the need for anti-discrimination provisions, as outlined by Lucy-Ann Buckley in her chapter on employment. There must be a balance between gender neutrality and gendered roles carved out by law; an equitable formulation which recognises, and does not perpetuate, injustice. Buckley discusses maternity, parental and adoptive leave provisions which reinforce women's childcare functions. For example, in 2016 Ireland introduced legislative provision for two weeks 'paid' paternity leave, which is in itself misleading. The two weeks is not in the form of salary, but rather comes in the shape of a social welfare payment, which undermines its appeal. Meanwhile, parental leave provisions are gender-neutral. However, because of the gender pay gap most women earn less than most men. Parental leave is therefore more likely to be taken by women. Therefore, this structural gender disadvantage may be self-perpetuating. Again, it is clear that sometimes gender-neutral legal provisions do little to recognise and reflect the reality of a situation.

Crucially, the Irish Constitution is far from gender-neutral. If the Constitution is not gender-neutral, it appears counter-productive to create legislative provisions which are blind to gender. Alan DP Brady considers what the result would be of removing

gender-specific provisions from the Constitution. In relation to Article 41.2 and the role of women as mothers in the home, a gender-neutral amendment would do little to redress the imbalance of unpaid care work in Ireland. While the Constitutional Convention recommended the insertion of a gender-neutral provision which valorised State support of carers, it is difficult to see what changes such an amendment would bring in reality. As Brady notes, women's explicit mention in the Constitution brought no tangible benefits for women in the form of State assistance or protection from hardship. Such provisions acted instead as potent symbols of the kind of society Ireland imagined itself to be.

Strikingly, in many cases, an overt (and necessary) gendered analysis is lacking. As Mary Donnelly writes, 'on even minimal reflection, the gendered nature of the Irish financial crisis becomes obvious.' The actors and institutions were male-dominated, and the repercussions have also been felt in keenly gendered ways. Donnelly's exploration of 'sexually transmitted debt' exposes the issues with either a gender-neutral or a gender-specific response, and brings an awareness that each is problematic in its own way – representing the danger of either not acknowledging a reality, or else reinforcing existing discrimination. Donnelly concludes by instead advocating a structural analysis of private law in Ireland which can take account for gendered lives.

One barrier to gender-specific provisions is the case of 'exceptions' and the inability of gender-specific provisions to accommodate all scenarios. As Louise Crowley notes of domestic violence, the evidence stacks up to suggest that women experience domestic violence at higher rates than men, and that the form of abuse is qualitatively different, involving more sexual abuse and greater physical harm. However, many men also experience domestic violence. The question which arises is how can we account for these cases if the law is framed around the gender of the 'majority'? Similarly, laws on pregnancy which are premised on the idea that only women can become pregnant ignore the experiences of transgender men. Arguments in this vein have provoked ire from some feminists, as diminishing women's experience. Equally, one of the questions that arises out of this volume is the extent to which there should be a relationship between gender and the law. Is it false universalism, or reflective of lived-experiences? If it is social fact, does enshrining gender in law ossify this? Law should reflect reality and attempt to ameliorate discrimination. Many contributors herein have shown how law can both facilitate gender discrimination, but also how law can be made to act as an impediment to inequality. These questions have led some to suggest that gender should not be part of the law. In her contribution, Tanya Ní Mhuirthile observes how, in recent years, Ireland has been brought to a greater awareness of gender through the Gender Recognition Act 2015. Yet, even here, one should acknowledge that many transgender individuals – some of whom may have waited for official acknowledgement of their preferred gender for numerous years (if not decades) – would not support movements away from the intersections of law and gender.

V. Gender and Nation-Building

On independence in 1922, all women and men aged over 21 years were granted the vote. However, women's role in the new Irish Free State almost immediately came under attack from conservative forces. Constraints were imposed on women's civic participation, in the

form of the Juries Acts 1924 and 1927 and in legislation from the 1930s that restricted married women's employment opportunities in the civil service. Women had been extended equal franchise, but women's citizenship rights became contested.

Key to these efforts to circumscribe women's role in the newly independent State was a template of womanhood that revolved around the idea of woman as 'mother'. As the contributions throughout this volume emphasise, women's participation in Irish life has, until very recently, been restricted to a private, domestic space. As Alan DP Brady observes, even the Irish Constitution has defined 'woman' through her 'life within the home'. The corollary was, of course, that women's voices were minimised and marginalised (with the legal identities of certain women, including lesbians and transgender women, being completely erased). These historical truths have inevitably shaped the law's conception of womanhood, as policy-makers attempted to fashion a legal mould to fit the preferred archetype.

As a powerful example, women's political representation after 1922, as addressed by Fiona Buckley and Yvonne Galligan, fell far short of the hopes pre-independence. The inevitable result was that political discourse, the speech which shaped national aspirations and values, was male discourse. At no time in the decades after 1922 did women's political representation exceed 14 per cent. The causes and consequences of this fact are felt throughout the book: in the institutional responses to non-conforming women, the failure to legislate adequately for sexual and domestic violence, women's lack of access to reproductive healthcare, and women's remarkably low participation in the workforce. As James Gallen concludes, many of the policies and laws implemented in the post-independence period were fundamental to, and shaped by, a wider project and desire for nation-building. It is also important to acknowledge that, when laws and policies were passed and implemented, their compliance and application has been, as Mary O'Toole recalls, overwhelmingly ensured by an older, middle-class, heterosexual and male judiciary.

Lucy-Ann Buckley's exploration of gender and employment demonstrates how the gender norms prevalent from independence shaped women's participation in the workforce, ensuring that, for decades, women undertook unpaid care work in the home. Constitutional provisions which enshrined, and continue to enshrine, such labour as a common good both reflected and reinforced contemporary thinking. Deirdre McGowan, in her chapter on the gendered nature of marriage breakdown and division of assets, notes that wage inequality was built into the male remuneration schemes as married men were paid more than single men, with the presumption that they would provide for a family, including a wife who was not in paid employment. As Brian Tobin observes in his exploration of parental rights, these social, legal and constitutional structures also have had gendered consequences for men – creating a State-sponsored regime which denies (and financially punishes) Irish men's desire to engage in caring or home-centred work.

Women's lack of paid employment inevitably contributes to their low stake in the family home, a theme which Mary Donnelly explores. Donnelly analyses recent case law on 'sexually transmitted debt' – a relatively recent phenomenon in Ireland as, prior to the 1980s and the advent of jointly-owned homes, most women did not have the property interests necessary to provide security for loans.

Deirdre McGowan also delves into women's unequal property interests, as she teases out the question of marital breakdown. McGowan cites the special position of the family home, again understood as a public good, whereby, although the property is owned by one spouse, the non-owning spouse has veto over disposal. McGowan suggests that, on the face

of it, marriage has little significant impact on property ownership; however, the structural, gendered context of society ensures that this is not the case in reality – in 2016, 98 per cent of those looking after a home or family were women. In very real terms, it is clear that if more men are working, and working longer hours, earning higher wages, men will accumulate more wealth. When a marriage breaks down, this leaves women especially vulnerable to financial hardship. Although law attempts to compensate for this weaker position at the point of marriage breakdown, once the legal process has ended there is little in the way of compensation for a woman who has devoted her adult life to unpaid care work in the home. ‘Proper provision’ rarely matches the contributions of women to a marriage in the form of long-term caring. Furthermore, as Deirdre McGowan, Alan DP Brady and Louise Crowley have all illustrated, Irish superior courts (particularly the Supreme Court) are reluctant to expand women’s (married and unmarried) property entitlements in circumstances where there is a clash with existing (usually property) rights.

The paramount importance of woman as maternal pervades the various chapters. As Lucy-Ann Buckley notes, maternity, parental, and adoptive leave provisions all reify a heterosexual model of parenting in which women are carers and nurturers and men are providers. As noted, Brian Tobin’s analysis of gender and parental rights presents the starkly gendered patterns of parenting in Ireland. While an unmarried mother has immediate guardianship rights over her child at birth, unmarried fathers in Ireland remain in a more tenuous, contingent position. The gendered legal framework on parental rights reinforces Catholic Ireland’s celebration of womanhood as motherhood and reinforces the secondary role of the father. Historically, the impact of such differences was clear in the shame experienced by unmarried mothers and in the network of institutional sites which responded to ‘illegitimate’ pregnancy. One of the intended consequences of the reification of women as mothers, within a socially conservative and Catholic nation, was the demonisation of women who became pregnant outside of marriage. The confinement of unmarried pregnant women in Magdalene Laundries and Mother and Baby Homes constitutes an incredibly gender-specific social abuse. James Gallen’s exposition of gendered historical abuse underlines the primacy of fertility too, in the preference for symphysiotomy over Caesarean sections in order to preserve female fertility.

Throughout this book, the Catholic Church emerges as an imposing character. Catholic social teaching informed the views of many in government, and members of the Catholic hierarchy offered policy contributions where they could, on matters integral to the creation of a Catholic society. Such input disproportionately impacted on the lives of women and girls, as morality, sexuality and maternity became focal points for concern. In his discussion of sexual orientation rights, Fergus Ryan notes how the infamous section 37 of the Employment Equality Act 1998 stifled any expression of gay, lesbian and bisexual identities in education and healthcare institutions, where such identities were perceived as incompatible with an existing religious ethos (effectively excluding the vast majority of gay teachers from coming out at work, given the monopoly which the Catholic Church continues to exercise in the provision of education across Ireland). Ryan also observes the powerful impact of religious considerations when David Norris’ challenge to Irish sodomy laws was heard before the Supreme Court in the early 1980s.

Within newly independent Ireland, the family, based on marriage, became the social unit par excellence, in which a mother and a father would raise and care for children. The familial ideal is enshrined in the Irish Constitution. This ‘ideal’ had many pernicious

consequences, including the prioritisation of heterosexual relationships, as well as the protections afforded to 'marriage' above and beyond the protections afforded to individual women.

Louise Crowley's analysis of State responses to domestic violence illustrates this point powerfully. As Crowley notes, there has been 'historical reluctance to intervene' in domestic violence, a reluctance associated with rights of privacy and property. This resulted in, *inter alia*, a failure to criminalise marital rape until 1990. Prior to this, a married woman was not in a legal position to refuse consent to sexual activity with her husband. Previous attempts to criminalise marital rape were met with resistance due to the prized position of marriage, and fears that wives' allegations of rape could jeopardise *potential future* reconciliation. Alan DP Brady's analysis of the Matrimonial Home Bill likewise illustrates the deferential status given to the family, and the impetus to protect the status quo within marital relations. As Fergus Ryan's discussion of the events leading up to the Marriage Act 2015 reminds us, while there are, and can be, many formulations of family in Ireland, only marriage attracts the protection of Article 41 of the Constitution.

Given the priority which the Irish State has historically placed upon family, and the preservation of marriage, it was somewhat counter-intuitive that, in its original form (passed before the marriage equality referendum had been ratified by the courts), the Gender Recognition Act 2015 obliged married applicants to divorce prior to obtaining a Gender Recognition Certificate. The justification for such pre-condition was the avoidance of unconstitutional same-gender marital unions. Yet, the requirement appears inconsistent with State preferences for maintaining (seemingly at all costs) validly existing marriages. It should also be observed that, while the Government's proposed regulation of surrogacy is a promising step towards acknowledging the diversity of family formations that exist in Ireland, such regulation must, as Andrea Mulligan observes, be introduced in a manner which respects and promotes the rights and dignity of all women who may play a part in the surrogacy process.

VI. International Law

It is clear, from many contributions to this volume, that the relationship between law and gender in this jurisdiction has been highly influenced – in important ways – by international, regional and comparative sources. This influence is undoubtedly most obvious in those aspects of Ireland's legal system which, in recent decades, have been amended (or added) to comply with the State's external obligations. In her chapter on transgender and intersex rights, Tanya Ní Mhuirthile explains how the introduction of the Gender Recognition Act 2015 was a direct consequence of Ireland's membership of the Council of Europe. While, in *Foy v Registrar General (No 1)*, McKechnie J (High Court) observed that the applicant, Dr Lydia Foy, had no constitutional or common law right to legal gender recognition, the same judge concluded, in *Foy (No 2)*, that Dr Foy could rely upon Article 8 of the European Convention on Human Rights (ECHR) to obtain an amended birth certificate.

A similar result prevailed in *Norris v Ireland*, described by Fergus Ryan in his contribution on sexual orientation. Although, in the earlier domestic litigation, *Norris v Attorney General*, a majority of the Irish Supreme Court affirmed the constitutionality of anti-sodomy statutes, the European Court of Human Rights, applying *Dudgeon v United Kingdom*, found

that such rules disproportionately interfered with private life under Article 8 ECHR. In her contribution on surrogacy reform, Andrea Mulligan warns that, considering recent Strasbourg case law (*Mennesson v France*), Irish law-makers may be compelled to recognise the legal relationship between a child born through cross-border surrogacy and its biological father, even where the surrogacy arrangement was commercial in nature.

Outside of litigation, international and regional standards have served as the impetus for important legislative and executive reform. In her exploration of amendments to Irish domestic violence laws (Domestic Violence Act 2018), Louise Crowley notes the crucial impact of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the ‘Istanbul Convention’). It is the Istanbul Convention which, in situations of emergency posing immediate threats of violence, has finally convinced Irish law-makers – who (as discussed) have historically prioritised the constitutional rights of property owners – to embrace a more protection-centred model, foregrounding (in admittedly limited circumstances) safety for victim-survivors. Similarly, in her contribution, Lucy-Ann Buckley observes the transformative influence of the European Union on Irish employment law and practice. Recalling the introduction of successive directives dealing with, inter alia, equal pay, equal treatment, social security, pregnancy and parental leave, Buckley explains how these EU measures have compelled the State to enact meaningful safeguards for female employees both accessing and operating within Irish workplaces.

International oversight, even when it cannot require immediate legislative reform, has often acted as a significant check on the exercise of State power, particularly executive power. In his chapter on historical mistreatment and movements for redress, James Gallen acknowledges the key role of United Nations supervisory bodies, including the Committee against Torture and the Committee on the Elimination of Discrimination against Women (CEDAW Committee). These bodies have: (a) critiqued past abuse, such as the Magdalene Laundries and Mother and Baby Homes; and (b) encouraged Ireland to promptly investigate, prosecute and remedy (including through financial compensation) proven rights violations.

UN-level criticism has also been levelled at Article 41.2 of the Constitution. Alan DP Brady observes, in his contribution on gender in *Bunreacht na hÉireann*, that, although this provision has not had any substantive impact on public law jurisprudence (and certainly has not enhanced the constitutional status of women), it has been condemned by the CEDAW Committee as symbolically reinforcing stereotypical attitudes. Fiona Buckley and Yvonne Galligan note that the same committee has complained about the absence of female representation within Irish political life, and suggest that the committee’s strong rebuke was a contributing motivation for the Electoral (Amendment) (Political Funding) Act 2012.

The international and comparative dimensions of law and gender are not limited to Ireland’s compliance with binding and soft-law obligations. As the various contributions in this volume attest, the Irish State has – increasingly in recent decades – become aware of its position as a legal actor within a global community. As successive Irish governments and parliaments have grappled with complex issues of social, economic and cultural concern, there has been a growing willingness among Irish policy-makers to explore reform models in other jurisdictions, and to consider the applicability of those models within an Irish context.

This new-found openness to comparative analysis is a logical and welcome development. As is clear from the preceding chapters, many (if not all) of the gendered questions which legislators have confronted, and continue to confront, are not unique to Ireland. Concerns, such as abortion, employment discrimination and sexually transmitted debt, also arise in other countries. They have required policy-makers in those jurisdictions to consider the same competing factors which press against Irish authorities, and to apply practical solutions which balance public acceptability and fundamental guarantees. For Irish law-makers, who (owing to the country's small population) often address social and cultural questions after they have already emerged in larger states, there is merit in reflecting upon the analysis of those who have already acted. In addition, as Monica O'Connor and Nusha Yonkova observe in their discussion of human trafficking, some legal problems present no clearly delineated boundaries in their national and international dimensions. To adequately and effectively address the root causes of those problems, even within a single jurisdiction, domestic authorities must be open to transnational perspectives.

Across the various contributions, there is considerable evidence of Irish law-makers drawing from (if not directly mirroring) measures which have already been adopted in other jurisdictions. In describing the recent overhaul of Ireland's prostitution and sex work rules, Ivana Bacik notes that the Oireachtas has implemented the so-called 'Nordic Model' – an approach to regulation applied across Northern European countries, and first developed by policy-makers in Sweden (Lucy-Ann Buckley suggests that Ireland should also look to Nordic jurisdictions, particularly Norway, in order to reform its parental leave entitlements). As noted, the Nordic Model involves the decriminalisation of the sale of sex work, as a means of protecting vulnerable individuals. However, it prohibits the purchase of such services on the basis that suppressing purchase will suppress demand, and will reduce exploitative supply chains. While outlawing purchasing rights has drawn heavy criticism from sex work advocates, Bacik suggests that Irish politicians were likely influenced by the prior introduction of similar structures by the Northern Ireland Assembly in 2015.

This phenomenon of 'policy-transfer' or 'neighbour effect' is also evident in other areas of Irish law. In his reflections upon movements towards sexual orientation rights in Ireland, Fergus Ryan acknowledges how various reforms in the United Kingdom, including the Civil Partnership Act 2004 and the Marriage (Same-Sex Couples) Act 2013, inspired and legitimised similar measures in this country. Indeed, during the marriage equality referendum, although there was public consciousness that Ireland would be unique in affirming same-gender unions through public vote, there was equally an appreciation that, by 2015, a majority of peer-nations had already permitted 'gay marriage'. The United Kingdom (in particular, the Human Fertilisation and Embryology Act 2008) also appears to have strongly influenced proposed interventions in the sphere of surrogacy. Like the 2008 Act, the Irish Government's General Scheme of the Assisted Reproduction Bill 2017 creates a uniquely non-commercial surrogacy framework, recognises gestation as the *prima facie* defining characteristic of legal motherhood, and prioritises the consent of birth mothers.

Understanding Ireland's position within a global community not only encourages legislators to take inspiration from other jurisdictions, it also increases consciousness that those jurisdictions may place a critical eye upon Irish laws. An interesting feature of Alan DP Brady's discussion of Article 41.2 of the Irish Constitution is the fact that, although this provision has not (as noted) significantly impacted domestic law, there remains considerable will for its removal or amendment. In many ways, this appetite for reform reveals a

concern as much about how Article 41.2 portrays modern Ireland as it does any substantive need to address existing harm.

In the same way, although there has been, for many decades, vocal opposition against restricting access to safe and legal abortions, there was (at least during the 2018 referendum) a palpable awareness of how the 8th Amendment – with its disregard for women’s autonomy, and its exporting of crisis pregnancies – presents Irish society to the world. Indeed, in his contribution on historical mistreatment, James Gallen suggests that the fact that institution-based scandals, such as the Magdalene Laundries, became global news stories increased pressure on State actors to investigate and redress allegations of abuse. This is somewhat ironic because, as Gallen recalls, in the early and mid-twentieth century, the existence of such institutions had been justified as protecting the Irish State from the international shame associated with ‘fallen women.’

It is, however, important to acknowledge that, in some situations, Irish law has gone beyond, and continues to go beyond, what is strictly required by international law. First, in the sphere of sexual orientation rights, Ireland created employment non-discrimination protections before these rights were guaranteed by EU legislation. In fact, although the Irish State only decriminalised sodomy in 1993, the Irish Government was soon thereafter a key actor in having sexual orientation safeguards included in the Treaty of Amsterdam. Under current national law (the Equal Status Act 2000), gay, lesbian and bisexual persons enjoy equality guarantees in accessing goods, services, accommodations and education. They benefit from these rights even though the EU legislator has been unable to agree similar protections at the supranational level. The Irish State has also provided for same-gender marriage protections, even though the European Court of Human Rights has (on a number of occasions) confirmed that no such entitlement currently exists under the ECHR.

Second, in her contribution, Lucy-Ann Buckley notes that, while the European Economic Community served as the catalyst for greater pregnancy rights in Ireland, domestic guarantees in the field of maternity leave now considerably outstrip the minimum entitlements which Member States of the European Union must respect. Finally, in the area of transgender and intersex rights, *Goodwin v United Kingdom* ensures that all Contracting Parties to the Council of Europe are obliged to offer some process – administrative or legal – through which persons can be formally acknowledged in their preferred gender. However, Irish law significantly exceeds the minimum ECHR requirements by allowing adult applicants to obtain a Gender Recognition Certificate through a model of self-determination.

VII. Intersectionality

Throughout this book, there is consistent evidence of the intersectional ways in which individuals have experienced, and continue to experience, gendered inequalities in Ireland.

Considering the demographics of women who suffered institutional and State-sponsored abuse during the twentieth century, James Gallen observes the disproportionately high number of economically and socially marginalised persons who were coerced into Magdalene Laundries and Mother and Baby Homes. While historic mistreatment is a cultural phenomenon, which impacted upon all sections of Irish society, it was primarily a mechanism through which to control the bodies and identities of poorer, disenfranchised

women. This is also true of the State's restrictive abortion laws, particularly following passage of the 12th Amendment to the Irish Constitution. While, post-1992, individuals with sufficient resources were able to procure abortions outside Ireland (typically in the UK and the Netherlands), the near-total prohibition on terminations placed uneven burdens upon financially constrained persons, who lacked sufficient funds to travel outside the jurisdiction. It also disadvantaged migrant women, particularly individuals navigating Ireland's asylum procedures, who may have had neither the right nor the necessary travel documentation to lawfully exit (and re-enter) the Irish State.

Thinking about intersectionality helps to identify: (a) those areas of law where multiple hardships and discriminations are not yet sufficiently acknowledged, and (b) necessary law reforms to appropriately account for lived-realities.

In her discussion of 'proper provision' on the breakdown of marriage, Deirdre McGowan highlights the deficiency of existing judge-made rules, which regulate general family law but which are typically developed in only 'big money' cases (ie litigation where there are substantial assets for division between the spouses). For McGowan, 'big money' disputes are an unfortunate background against which to develop broader principles, because they reflect the experiences of one, privileged category of litigant, and are ill-placed to accommodate the intersecting issues of class, opportunity and resources, which are often central to disputes regarding asset division. Similarly, as Mary Donnelly observes in her contribution on 'sexually transmitted debt', it is typically the most affluent individuals who have the means to challenge actions for repossession. While it is clear that the effects of the financial crisis were not limited only to those with sufficient means, Donnelly's analysis suggests that it is economically privileged individuals who have greater capacities to defend against financial institutions.

In her exploration of Irish employment law, Lucy-Ann Buckley observes that, although the Employment Equality Acts 1998–2015 foresee the existence of discrimination on multiple grounds, they recognise only additive rather than intersectional claims. A person may bring an action alleging discrimination on the basis of gender and race, but she cannot advance a claim as a woman of colour. The result, therefore, is that, while Irish law acknowledges that female employees may experience inequality on grounds in addition to their gender, it cannot understand how those grounds intersect with gender to distinguish different women's experiences of discrimination. Similarly, in their chapter, Monica O'Connor and Nusha Yonkova suggest that, without emphasising poorer women and women who lack access to substantive rights, Irish and European efforts to counteract human trafficking can have only limited effect. Indeed, the same is arguably true in the sphere of surrogacy law. In recognising past and existing abuses of vulnerable (often Global South) women who act as surrogates for wealthy commissioning parents, the General Scheme of the Assisted Reproduction Bill 2017 proposes a model which reduces potential commercial exploitation and foregrounds the consent of gestational mothers.

Being aware of intersectionality also requires a critical perspective on recent reforms which have been achieved on questions of law and gender. While the Gender Recognition Act 2015 was a landmark moment for transgender rights in Ireland, it places highly restrictive pre-conditions on young persons who wish to be formally acknowledged (and fully excludes persons under 16 years). Incorporating medical assessment and parental consent requirements, the 2015 Act disadvantages those (many) transgender minors who live at the intersections of healthcare and social inequality. The statute creates an access structure

through which only well-resourced, supported transgender adolescents will obtain a Gender Recognition Certificate. Similarly, one must also consider the ultimate beneficiaries of the Marriage Act 2015. While, in the abstract, the recognition of same-gender marital unions undoubtedly enhances the equality of LGB persons in Ireland, Fergus Ryan rightly questions whose lives are substantively improved by access to marital protections. Within a wider LGBT community which suffers higher levels of mental ill-health, higher unemployment rates and higher instances of violence, does a narrow focus on marriage rights (while symbolically important) hide the other, intersectional vulnerabilities which LGBT persons in this jurisdiction face?

VIII. Limitations of the Law

A striking commonality among the various chapters is the extent to which they expose certain weaknesses of the law in creating social change. While, in recent years, Irish society (and Irish law in particular) has undergone significant transformations, one must not overstate the capacity of *legal* reforms to eradicate discrimination or erase historical abuse. Enhanced bodily rights, stronger employment and family law protections, and the official recognition of diverse experiences of gender and sexuality are all welcome features of a modern, outward-looking Ireland. Yet, as the various contributors to this volume explain, simply amending legal frameworks, even where those amendments improve lived-experiences, can have only limited impact without accompanying efforts to address the social, economic and cultural factors which drive gender-based inequality.

In her chapter on sexual offences, Susan Leahy provides a detailed account of recent legislative interventions, most notably the Criminal Law (Sexual Offences) Act 2017, which aims to establish, *inter alia*, more robust response structures regarding the crime of rape, particularly in relation to consent. However, while there was (and remains) an undoubted need to recalibrate the applicable rules and standards where an allegation of rape is made, Leahy observes that true reform – whereby women both: (a) suffer lower rates of sexual violence; and (b) experience a more accessible legal system if such violence takes place – necessitates a fundamental shift in the way society understands female sexuality. Although one can applaud movements towards communicative sexuality and mutuality, these reforms are unlikely to create substantive change without society-led challenges to rape myths, proper education (especially for young men) regarding consent, and a commitment among legal professionals (both judges and practitioners) to respect the dignity of victim-survivors.

In her contribution, Deirdre McGowan also identifies constraints of legal interventions. Referring to the High Court case of *PH v FT* – where Abbot J refused to reduce the maintenance payments owed by a male litigant to his former wife – McGowan notes that, while the legal solution proposed responded to the immediate precarity in which the female individual found herself, the judgment did nothing to create empowerment or redress historic imbalances. The High Court acknowledged that proper provision required continuing payments to maintain the former wife, who was primary carer for the parties' children. Yet, as McGowan observes, Abbot J was unable to deal with the underlying social factors, which created the wife's financial vulnerability. In particular, the judge placed no obligation upon the male litigant to engage in further child care responsibilities so that his former wife might be able to re-enter the labour market.

Similar limitations of the law are evident in numerous other chapters throughout the volume. Alan DP Brady explores the gendered nature of the Irish Constitution, and considers to what extent *Bunreacht na hEireann* can be (and has been) used to enhance gendered experiences of constitutional rights. Noting (as discussed above) a manifest reluctance among Ireland's superior courts to extend constitutional protections to female litigants, Brady suggests that symbolically including women within constitutional frameworks has only limited effect if, in practice, women suffer disproportionate economic and social marginalisation. Patricia Brazil observes a similar phenomenon whereby, even during the period when Ireland's asylum laws made specific reference to gender and sexual orientation, decision-makers (and the superior courts on appeal) were either unwilling or unable to, in many cases, adequately identify and respond to the vulnerability of women, young girls and LGB asylum applicants.

In their contribution, Monica O'Connor and Nusha Yonkova outline recent European and Irish efforts to combat and criminalise human trafficking. Although O'Connor and Yonkova recognise the symbolic (and in many ways practical) importance of legal reforms to address the cross-border sale of humans, they argue that, without broader cultural shifts against the sexual commodification of human bodies, such reforms will not displace European and Irish human trafficking networks. Finally, in her reflections on 'doing gender' in Ireland's employment law sphere, Lucy-Ann Buckley observes that, despite the recent introduction of long-advocated-for paid paternity leave entitlements, society-entrenched gender norms may still be discouraging men from exercising these rights.

A particularly notable limitation of legal solutions – evident throughout the volume – is the creation of binary 'good-bad' categorisations. This is, perhaps, nowhere more obvious than in movements for reproductive choice. While, since the introduction of the 8th Amendment in 1983, advocates for choice, and politician-allies, have been strategising for reform, their efforts have – at various junctures over the past 35 years – been hampered by the restrictive nature of potential legal frameworks.

In particular, advocates have struggled with the knowledge that, in foregrounding or agreeing to politically-palatable proposals, such as abortion rights in cases of rape, incest and fatal foetal abnormalities, they would be distinguishing the acceptability of different women's choices. This, in turn, would mark certain women as insufficiently worthy of bodily autonomy. The lingering shadow of the 'bad' abortion impeded, for many years, a cohesive civil society voice on abortion rights, and divided women's rights organisations on questions of reproductive justice. Indeed, it is unsurprising that, only when civil society and political actors showed a willingness to frame reproductive rights through the lens of experience and choice rather than levels of worth, meaningful progress – culminating in the repeal of the 8th Amendment in 2018 – was achieved.

The capacity (even propensity) of law to box individuals into 'good/bad' classifications can also be seen in other contributions. As noted above, in her reflections upon domestic violence, Louise Crowley observes how Irish law has historically disadvantaged persons – most often women – who experience abuse in circumstances where they are neither married to the perpetrator nor have a property interest in the shared home. Until the Domestic Violence Act 1996, unmarried women could not apply to remove a violent partner from a property which the parties shared, but in which the woman had no interest. Although, under the current applicable rules, non-spouses and partners enjoy increased access to barring orders, they still benefit from fewer remedies than their married counterparts.

These distinctions create a worrying perception about how the Irish State differentiates the value of victim-survivors. It appears to imply that, should women make a personal choice to forgo marriage or be unable to substantively contribute to the acquisition of property, they forfeit their right to State protection.

A similar perception regarding the forfeiture of rights arises in Susan Leahy's chapter on sexual offences. Through her exploration of Ireland's rape laws, Leahy identifies a criminal law system which tolerates (and even facilitates) broad assumptions that women's clothes, their consumption of alcohol, and their sexual history reduces their legitimate expectation to be free from violence.

In his contribution, Fergus Ryan also refers to assumptions; although these are not assumptions that, in certain circumstances, LGBT persons surrender their rights. Rather, Ryan discusses emerging social (and even intra-LGBT) assumptions that, having gained access to civil-marriage entitlements, all non-heterosexual couples will now exercise those rights. For Ryan, such an assumption may potentially disadvantage the many same-gender partners who consciously choose to organise their lives – both separate and intertwined – outside formal structures. The fear is that, having embraced 'good' LGBT individuals within marital frameworks, the law will now censure (and will encourage society to censure) those 'bad' couples who remain outside marriage norms.

While these limitations of legal intervention clearly arise from law's restricted capacity to challenge cultural norms, they also reinforce the gendered processes (discussed above) through which Ireland's legal framework is produced. In their contribution, Fiona Buckley and Yvonne Galligan consider the extent to which male-identified individuals have historically dominated, and continue to dominate, Irish law-making institutions. Although, in recent years, and specifically through the operation of the Electoral (Amendment) (Political Funding) Act 2012, more women have ascended to legislative and governance positions, creating law remains an overwhelmingly male enterprise in this country. It is unsurprising that where: (a) the negative effects of legal norms are disproportionately experienced by women; but (b) efforts to address those effects are typically proposed and introduced by men (and, as Mary O'Toole notes, legally overseen by a largely male judiciary), law-based solutions to gendered inequality will have only a limited (sometimes counter-productive) impact. Until the voices of women are appropriately incorporated into legislative and judicial practices, the results of those practices will have an inevitable detachment from the reality of women's lives.

IX. Conclusion

The relationship between law and gender in Ireland has evolved rapidly over the past three decades. Increased bodily autonomy, the formal acknowledgement of diverse familial arrangements and a reconceptualisation of how individuals can and should 'do' gender, has expanded social and political consciousness, and created a pathway for significant and meaningful legislative reform. In many cases, amendments to Irish law and policy have been grassroots-led, with political and public actors responding to overwhelming shifts in Irish public attitudes. The recent referenda campaigns to enshrine same-gender marriage rights, and to remove constitutional prohibitions on abortion, are just two (high profile) examples of wider, public-empowered movements to create gender-based reform.

Yet, as the above discussion and the substantive contributions to this edited volume attest, gender inequality and gender stereotyping remain a significant (if not always explicitly visible) characteristic of the Irish legal system – both in terms of the rules and policies that are applied, and the processes by which law is made, experienced and enforced. At numerous junctions, and within numerous legal spheres, women and those who transgress social gender norms are either: (a) unable to access legal structures which vindicate their basic rights; or (b) positively disadvantaged (sometimes under the guise of protection) by existing legal frameworks. The contributions to this edited volume, while celebrating the momentous advancements of the past 25 years, advocate a more nuanced, reflective and sensitive relationship between gender and law in the modern Irish State. While, as noted, law cannot be the sole answer to Ireland's problems of economic, political and social gender disparity, recalibrating existing legal structures to acknowledge and address gendered-realities can be an important – both practically and symbolically – first step.