

# The gender politics of marriage in Ireland<sup>1</sup>

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It is rare that a book's dedication is quite so apposite to its theme as Maria Luddy and Mary O'Dowd's in their new history of marriage, which reads: 'For Mary Cullen and Margaret MacCurtain who began it all.' Indeed, they did, and this tour de force is a fitting testament to the significance of that women's history project started in the 1970s, which has 'paved the way for all of us who engage with Irish gender history' (p. xiii). Luddy and O'Dowd, both pioneers in the field in their own right, set themselves the not inconsiderable task of producing 'an extended study of the history of heterosexual marriage on the island of Ireland from 1660–1925' (p. 1). The result is a rich, colourful, at times playful, but also often depressing, five-hundred-and-fifty-page study of the most popular sexual bond between men and women in history — marriage. Indeed, that complex institution was obviously on the historical mind because Diane Urquhart's erudite study of Irish divorce from 1800 to 1997 and Sonja Tiernan's deftly navigated history of the marriage equality campaign in Ireland were also published in 2020.

Running through all three are the tensions between blood, sex, gender identity and the law — the central ties that bind in familial formation. Collectively, these monographs underscore the dynamism these elements introduced into human relations as shifting understandings of what blood meant in relation to ownership, for example, or gender meant in relation to the law, transformed the very meaning of marriage itself. Effectively, these books chart the formalisation and secularisation of marriage and its transition from a union in perpetuity between men and women to one with a shelf life, no longer defined by the gender or sexual identity of either party. The families these scholars found in the archives were often unstable and multifaceted. In fact, Luddy and O'Dowd and Urquhart's books highlight that the loud and persistent assertion that 'heterosexual marriage' was a bulwark against social chaos was as much a fiction as the claim to an Irish monopoly on sexual morality (also asserted by historical sources throughout both these studies). All of these histories draw upon an impressive array of source material from newspapers, court records, diaries, memoirs, public debates, wills and religious archives. In fact, Luddy and O'Dowd and Urquhart's studies in particular reveal how the digitisation of Irish newspapers has made a *longue durée* study of legal and social attitudes possible, where previously it would have taken decades.

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<sup>1</sup> IRISH DIVORCE: A HISTORY. By Diane Urquhart. Pp 294. Cambridge: Cambridge University Press. 2020. £74.99/£22.99.

MARRIAGE IN IRELAND 1660–1925. By Maria Luddy and Mary O'Dowd. Pp 460. Cambridge: Cambridge University Press. 2020. £74.99/£24.99.

THE HISTORY OF MARRIAGE EQUALITY IN IRELAND: A SOCIAL REVOLUTION BEGINS. By Sonja Tiernan. Pp 192. Manchester: Manchester University Press. 2020. £80.00/£20.00.

In 2008, when Jane Pillinger wrote the Irish Marriage Equality Campaign's position paper, *Making the case for marriage equality*, she isolated what it was about the institution of marriage that conveyed equal rights: it affords relationships social value and provides certain social, material and familial protections. All these she argued were not afforded to gay and lesbian relationships as long as they were denied access to the legal institution of marriage (Tiernan, p. 47). In many respects, these three books trace how this idea of marriage emerged and how the rights it conveys developed, were contested, circumvented and sundered. All three are also inevitably histories of the law, how it is encountered by 'ordinary people', contested and shaped by the religious and political arenas and, ultimately, how it relates to socio-cultural change in human relations.

Personal stories are central to all of these books: in Urquhart and Luddy and O'Dowd's studies these are the personal stories people were forced to surrender in the legal arena to get what they wanted or needed from a criminal conversation or breach of promise case, a bigamy or abduction trial, or a bid to secure a divorce. In Tiernan's study personal stories animated the campaign for equal marriage rights, such as the journalist Ursula Halligan's declaration in May 2015, in the *Irish Times*, that the referendum had made her realise that 'homophobia was so deeply embedded in my soul, I resisted facing the truth about myself' (p. 114). Indeed, the power of these stories was recognised by both sides, leading those opposed to same-sex marriage, such as members of the Iona Institute, to lament the 'real danger that this debate is going to be led by emotion. It must instead be led by reason and a calm consideration of the facts' (Patricia Casey, cited, p. 51). However, emotions once tapped released an energy all of their own, which would also help to carry the tide of the 2018 abortion referendum.

There is some irony in the fact that for the first two hundred years of Luddy and O'Dowd's study it is the confusion of what constituted a legal marriage in Ireland that preoccupies much of the source material. Was it the location of marriage? Was it the religious celebrant who performed it? Or did a promise in a bedroom suffice? Where there was confusion and ambiguity there was a business opportunity. Thus, out of the mists of Irish marriage law and custom emerged the 'couple beggar': a slightly shady character that was in the business of hasty, sometimes secret, often private, ad hoc marriage services for financial gain or whiskey. As Luddy and O'Dowd note, the 'couple beggar' was a priest or minister who had fallen foul of their church, often due to their relationship with alcohol and/or sex. Johann Georg Frederick Schulz, a German Lutheran minister, was one such character that Luddy and O'Dowd rescue from obscurity. Heading from Germany in the early 1800s to do missionary work in Africa, Schulz was washed up on Ireland's shores as a result of a shipwreck. Instead of resuming his voyage, he became a pastor of the Lutheran congregation in Dublin city, where he also provided services in the German language for visiting seamen. However, his real income came from marrying people in his home and two of his marriage registers, which unlike the majority of registers were not held in the Four Courts but the General Registrar's Office and thus survived, indicate that he married thousands of people as a 'couple beggar' during his lifetime (Luddy and O'Dowd, pp 64 and 74). Richard Sanders, a degraded Church of Ireland minister, also operating as a 'couple beggar' in the King's County (Offaly) area in the early 1800s, was paid in whiskey and 'was an object of terror to all parents within ten miles of his dwelling' (cited in Luddy and O'Dowd, p. 67). This one line indicates the disruptive quality of the 'couple beggar' and his work: he could undermine the law, parental control and love's true course or enable a desire for sex with a hasty service performed in a bedroom.

The ‘couple beggar’ disappeared by the 1850s with the formalisation of the marriage landscape (Luddy and O’Dowd, p. 36).

Collectively these books chart the relationship between marriage and wider social changes relating to notions of faith, manliness, femininity, child welfare, violence, cruelty, bodily autonomy, sexuality and the role of church and state. Luddy and O’Dowd map the various routes into marriage from abduction to courtship revealing how ideas of class, rape, and consent changed over the long-nineteenth century. Known in Irish folklore by various terms such as ‘snatching’ or (my favourite) ‘left-hand marriage’, the often brutal practice of abducting women in order to force a marriage, for example, was a violent manifestation of the financial implications of a good match, the lack of female autonomy, on occasion class tensions and, sometimes, parental control or an attempt to subvert it (Luddy and O’Dowd, p. 182). *Marriage in Ireland* documents cases in which a labourer wished to improve his status and abducted and raped the daughter of a wealthy man, or a servant abducted another servant because she turned him down, or a couple wished to marry and the parents did not approve, and, bizarrely, a case in which parents organised the kidnaping in order to force their daughter to do as they wished (Luddy and O’Dowd, pp 181–216). Between 1800 and 1850 about 2,000 people were convicted for their part in an abduction (Luddy and O’Dowd, p. 205), but by the 1860s such attacks had declined and were less violent, their purpose increasingly to enable a couple to elope; i.e. a manifestation of the changing social values which were reconceptualising love and marriage (Luddy and O’Dowd, p. 189).

In fact, the Irish heart was a practical thing, finding its desire most often in its immediate locality and often within its own extended family. The changing landscape of the nineteenth century with its roads, trains, promenades, concert halls, libraries, dances and gradual urbanisation and rising literacy, literally and figuratively opened up new territories and spaces for romance (Luddy and O’Dowd, pp 105–06). However, for the most part the Irish married within their class and faith, and there was considerable social pressure for them to do so. While this was an impoverished society for much of its history, by the nineteenth century it had an increasingly educated population, which facilitated the growth of the newspaper industry. Newspapers became a central plank in the public sphere, often bringing the most intimate aspects of the private sphere into their orbit for entertainment as much as information value. It was in the paper that people learned about bigamy, abduction and divorce cases, that a husband could disown his wife’s debts in a case of desertion or infidelity and, indeed, that that wife could refute those allegations. This had some unintended consequences, such as the promotion of court-tourism, for example, because people were often alerted to up-and-coming divorce cases starring wealthy or interesting protagonists and travelled to see them in the flesh. Luddy and O’Dowd relay this circular relationship between newspapers and the courts in the *Freeman’s Journal* on 19 April 1817, which told its readers that all of Galway’s lodging houses were full with people wishing to attend the breach of promise proceedings of *Blake v Wilkins*, which they had read about in the same paper. Widow Wilkins rewarded the public’s interest by attacking the barrister in the case with her horsewhip for referring to her as ‘vain old lady of 65’ (Luddy and O’Dowd, p. 166).

Of possibly greater importance regarding social change was the role newspapers played in circulating the judgement of the courts in relation to cruelty and violence in many divorce cases, thereby ensuring these ideas gained a much wider social currency. Luddy and O’Dowd point out that wives’ public testimony in local petty session courts, which were covered by the newspapers, made ‘intimate

violence visible to the wider community', resulting in campaigns to control male behaviour via legislation (Luddy and O'Dowd, pp 317–18). It must also have enabled male violence by revealing its prevalence *and* the lack of any real consequences for it: if a penalty was imposed it tended to be two months of hard labour, which was often suspended as a result of a wife's petition because the patriarchal structures of the economy made her financially dependent on her husband. Emma Griffin's fascinating study *Bread winner: an intimate history of the Victorian economy*, also published in 2020, raises intriguing questions regarding the impact of the breadwinner model on gender violence. A central theme running through both Luddy and O'Dowd and Urquhart's studies of heterosexual marriage is the place, definition, persistence and legal implications of violence within that institution. It is not just that these historians found evidence of violence in marriage — they also reveal the role ideological thinking and legal writing about marriage played in the social acceptance of gender-based violence. The institution of marriage was central to the economic rationale of modernisation, dowries, inheritance, property rights, legitimacy, child custody and conjugal rights — all the tools afforded to the institution to help keep money and property in the right hands. Thus, part of this history is the gradual shift from the legal view of the wife as the husband's chattel and the financial, emotional and physical implications of that change.

Urquhart tracks these changes throughout her book, proving that Irish cases played a significant role in changing definitions of cruelty far beyond its shores. Wife-beating, she notes, came in for increasing criticism from the 1820s; by the 1850s it was regularly being framed as 'unmanly'. Urquhart demonstrates how the Irishwoman Louisa Westropp's 1880s divorce was pivotal in expanding the legal definition of cruelty. She married her first cousin at nineteen and had three children. However, within three months of marriage he was verbally abusing her, spitting in her face and, by the end, causing her and her children to live 'in bodily fear'. Evidence, reprinted in the *Irish Times*, gives us but a small glimpse into the psychological impact of such terror: 'She was so miserable that it did not much matter whether he did so [shoot her] or not ... late at night she was obliged to take refuge in a cupboard from his violence. He was going about the house with a thick stick breaking everything and calling for her' (pp 115–17). Legal changes meant that she had been able to formally separate from her husband through the Irish matrimonial court, and a decree from the Irish court of chancery gave her custody and control of the children. Both these achievements revealed how far the legal system had travelled in enabling some women to legally leave violent husbands with their children. However, the fact that she still needed to pursue a parliamentary divorce to be completely free underscored how much still needed to be done. Her evidence was considered to be 'extraordinary' by contemporary standards and had a significant impact on the legal definition of cruelty required as grounds for divorce. Her case broadened the idea of cruelty from a series of one-off episodes to a campaign of terror engendering insecurity and constant fear that impacted on all members of a family. Urquhart also argues that this case encouraged other women to bring forward suits on the grounds of cruelty.

However, as Urquhart points out, divorce was the preserve of the very wealthy in Ireland until the late twentieth century. Class played out in other ways too. There was, for example, a pervasive legal and social commentary which framed upper-class women as more fragile and less able to withstand brutality than their working-class counterparts: Sir John Nicholl was not alone in his observation that a 'blow between the parties in the lower conditions and in the highest station of life bears a very different aspect' (p. 108). Throughout the nineteenth century ideas of

what constituted civilised behaviour, intimately interwoven with ideas of gender, class and race, were playing out across the empire, inevitably impacting upon understandings of marriage. The idea of forcing a wife to remain with her husband via a restitution of conjugal rights order, for example, was increasingly considered to be ‘uncivilised’ as the century wore on. However, the fact that marital rape was not recognised or criminalised until 1990 in the Republic of Ireland underscores how much of this was about the wider mission of modernisation and civilisation rather than any deep-rooted cultural change of heart regarding gender equality and women’s bodily autonomy. In other words, much of this change in the nineteenth and early twentieth centuries in relation to what was acceptable within the bounds of marriage was about men and notions of masculinity and not about women and their protection or empowerment.

Tiernan’s study of marriage equality is not concerned with the institution of marriage’s long history of embedding, rationalising and reinforcing a sexual double standard between men and women, but with the ways in which that institution has been used to shore up a heterosexual advantage in law, welfare and finance. Thus, Tiernan starts her story with academic and activist David Norris’s fight to decriminalise homosexuality in 1970s Ireland. In 1983, the Irish supreme court reaffirmed that criminalisation on the grounds that ‘homosexuality is morally wrong, that it is damaging to the health both of individuals and the public and, finally, that it is potentially harmful to the institution of marriage’ (*Norris v. Attorney General* [1984] IR 36 (SC), 65). This is a reminder of the power of the idea of the institution of marriage as an abstract thing in and of itself that needed protection from living breathing people either seeking to sunder its bonds by divorce, or single mothers and homosexuals whose very existence was deemed to threaten that institution.

Just as Urquhart traces Ireland’s — north and south — resistance to change based on a social conservatism that was bolstered, but not the solely down to, religion, Tiernan’s study underscores how without the European Court of Human Rights (E.C.H.R.) the journey for same-sex marriage in the Republic of Ireland would have been an even longer one. She argues that the E.C.H.R.’s 1988 ruling in favour of Norris represented a ‘turning point in gay rights movement in Ireland’ (p. 10). Also in that year, Kieran Rose and Christopher Robson established the Gay and Lesbian Equality Network (G.L.E.N.) and in 1993 homosexuality was decriminalised. From this point, Tiernan takes the reader on a very well-mapped journey through the ups and downs and complications of the campaign for equal marriage, which included tensions between those that sought civil partnership and those that believed only same-sex marriage would bring real equality.

Tiernan’s study is a tribute to activism; it highlights what thankless work it can often be and how determination is the key ingredient required. Crucially, she reinforces the value of knowing the history of things because the arguments and tactics used to block change are rarely new. In the run-up to the Irish same-sex marriage referendum in 2015, the Catholic archbishop of Tuam, Michael Neary, warned Irish society that it ‘should be aware of what is at stake here. We are in fact redefining the family. Throughout history and across all cultures, marriage has been consistently understood to be the union of male and female with procreative potential’ (cited on p. 114). As these three studies demonstrate, the family and marriage were constantly being redefined. While the assumption that marriage was a heterosexual institution was a constant for many centuries, the archives prove this in no way guaranteed stability for any of its players. Likewise, ‘procreative potential’ has never been assured, necessary or restricted to the confines of marriage. In fact,

marriage, as it was legally defined for much of its history, institutionalised sexism and homophobia.

In 2004, the Irish Revenue Commissioners wrote to Drs Katherine Zappone and Ann Louise Gilligan to refuse their request to have their Canadian marriage recognised for the purposes of tax in Ireland, quoting, as justification, the *Oxford English Dictionary*'s definition of the meaning of husband and wife:

*Husband* – a married man especially in relation to his wife

*Wife* – a married woman especially in relation to her husband (Tiernan, p. 22).

However, these three histories are testament to the reality that however enduring and long-lived an idea, it is always subject to change and while sometimes that change seems to come suddenly, it never does. Change has its context, and it took a long time and much work to create the historic moment for equal marriage, and that moment was 2015. Likewise, as the current moment tells us, change is never guaranteed, stable or irreversible.