implicitly categorises partners as 'gay' or 'straight', eliminating the validity of the bisexual experience.

[115] For the original judgment, *see* <http://documents.nytimes.com/us-district-court-decision-perry-v-schwarzenegger#document/p137> [accessed 14 June 2012].

[116] In the USA various tests are used to assess the constitutionality of discrimination claims, ranging from a particularly high standard of strict scrutiny, whereby the state must demonstrate that the discrimination is strictly necessary to achieve a compelling state interest, to a weaker 'rational basis' test, which requires that the measure be upheld unless it can be shown that it serves no rational legitimate purpose. While different tests have been used in various states in same-sex marriage cases, Walker J. employed the strict scrutiny test but, referring also to the rational basis test, found that the ban did not survive even this, the weakest of the applicable tests.

[117] Same-sex couples in California are entitled to adopt and foster children, and to access assisted human reproductive services. The judge noted, indeed, that approximately 18 per cent of same-sex couples in California are raising children.

[118] *Perry v Brown*, Judgment of 7 February 2012, available from: <http://www.ca9.uscourts.gov/datastore/general/2012/02/07/1016696com.pdf> [accessed 14 June 2012]. On 26 June 2013, the US Supreme Court, in *Hollingsworth v Perry* 570 US (2013), refused to overrule the original decision of Walker J. in the Federal District Court in *Perry v Schwarznegger*. The Supreme Court ruled that the parties who had appealed Walker J.'s earlier decision lacked legal standing to do so, both before the Ninth Circuit and before the Supreme Court itself. This effectively means that Proposition 8 has now been overturned, with the result that same-sex couples may once again marry in California. On the same day, in *United States v Windsor* 570 US (2013), the Supreme Court declared parts of the Federal Defense of Marriage Act unconstitutional. The Act had precluded federal recognition of marriages between same-sex couples recognised in individual states. The court found that the federal government's failure to recognise such marriages denied married same-sex couples equal protection in the application of liberty and due process rights under the Fifth Amendment to the US Constitution.

[119] Using a test of intermediate scrutiny, halfway between the rational basis test and the strict scrutiny test discussed above in endnote 116.

[120] The right to seek further provision (and, in particular, the right to ongoing financial support) ends where the applicant or recipient of relief marries or enters into a civil partnership after a dissolution or divorce. Similarly, the surviving civil partner's right to relief ends where either civil partner dies.

CHAPTER 4

The Pursuit of Gay and Lesbian Sexual Citizenship Rights, 1980–2011

Paul Ryan

Introduction

On 5 April 2011 Barry Dignan and Hugh Walsh became the first Irish gay couple to register their civil partnership. The ceremony was made possible by the passage of a Civil Partnership Act (discussed in detail in Chapter 3) that bestowed a range of marriage-like provisions and obligations on couples in the areas of taxation and social welfare.[1] The passage of the Act was an extraordinary achievement. When Dignan and Walsh first met, almost twenty years earlier, their sexual relationship constituted a criminal offence under sections of the Offences Against the Person Act 1861 and the Criminal Law Amendment Act 1885 (Weeks, 1996: 48). The passage of the Act marked the culmination of nearly forty years of gay rights campaigning and opened a new phase in the pursuit of equal marriage rights for gay and lesbian couples. The slow pace with which gay couples moved from being outlaws in their own land to being granted almost full sexual citizenship rights raises important questions. It highlights how the tempos of sexual liberation movements are determined by and intersect with a changing political and cultural milieu. It reminds us that sexual liberation is not an automatic perquisite of modernisation, moving in a linear direction towards equality. There are starts and stops. There are false dawns.

This chapter charts the journey of gay men and lesbians seeking vindication of their rights in Ireland and the European Union.

The three decades from 1980 to 2011 reveal two distinct cycles of mobilisation. The successful case taken by Jeffrey Dudgeon to the European Court of Human Rights (ECHR) in 1981, which led to the decriminalisation of homosexuality in Northern Ireland in the face of strong opposition from Ian Paisley's 'Save Ulster from Sodomy' campaign, set the stage for a similar change in the law south of the border (McLoughlin, 1996: 36).[2] The Irish State resisted such a move, forcing then Trinity College lecturer and senator David Norris to embark on a lengthy and costly legal campaign through the same European court in order to achieve the same judgment some eight years later.[3] In this chapter we will explore whether this was the result of a counter-sexual revolution or whether, more fundamentally, the idea of a sexual liberation in Ireland during the 1960s and 1970s was greatly exaggerated. We will consider this victory in the ECHR and the campaign for civil partnership rights in the context of an extension of sexual citizenship identified by Diane Richardson (1998; 2000) and Ken Plummer (2001), among others, to illustrate the transnational dimension of sexual rights in late modern societies.

The development of the gay movement in Ireland in the 1970s was occurring within a wider process of informalisation. Identified by Dutch sociologist Cas Wouters (2004: 2–4), informalisation refers to a trend of growing permissiveness in the rules of social conduct that govern emotions and contact between the sexes and within social hierarchies, in other words an informal approach that supersedes the formal rules that previously governed social interactions. People expressed this growing freedom through fashion, dancing, music and hairstyles. Wouters (2004: 80–84) argues that the greater use of first names in social introductions and the spread of social kissing between virtual strangers in the 1960s were indicative of a greater intimacy and familiarity. Informalisation provides a useful framework for understanding a broader cultural flux that enveloped the gay rights movement and the ordinary gay lives within it. Informalisation brought a relaxation of manners, etiquette and deference towards elders and authority figures. It brought greater equality between the sexes, with wider public discussion of such topics as pre-marital sex, cohabitation and contraception. Gay men and lesbians were the unintended beneficiaries of this relaxed climate.

Setting the Stage: Battles Won and Lost

Our story begins in 1980, a landmark year in Irish sexual politics. The Fianna Fáil government's Health (Family Planning) Act 1979 had just come into force, providing for the provision of contraceptives to married couples on prescription from their doctor (Hug, 1999: 114; Ferriter, 2005: 666; Ryan, 2011: 72). The 1979 Act, which decriminalised the importation and sale of contraceptives, was required under a 1973 Supreme Court judgment in the *McGee* case, which ruled that the ban was unconstitutional because it breached the right of marital privacy (Connolly, 2003: 159; Ryan, 2011: 18). The political establishment grappled with the consequences of the Supreme Court judgment for the following seven years and attempts to enact the ruling, such as the Fine Gael government's proposals to legislate in 1974, were repeatedly brought down by a combined Fianna Fáil opposition and divisions within the government front-bench. From the moment a cohort of gay men and lesbians gathered together in Trinity College Dublin, in the early 1970s to form the Sexual Liberation Movement (SLM) – a forerunner to the Irish Gay Rights Movement (IGRM), founded in 1974 – overturning the ban on contraception was high on their agenda. Those within the gay movement recognised the importance of severing the association between sex and procreation (Ryan, 2006: 88). Throughout the 1970s there had been a wider discussion of sexuality outside the confines of the marital bed; a new narrative that described sex for pleasure, for recreation, for self-fulfilment. This development has been conceptualised by sociologist Anthony Giddens (1994: 2) as marking the emergence of *plastic sexuality*, where contraception and women's greater economic independence from men contributed to the liberation of sexuality from the modernist constraints under which it had laboured. In this late modern era, a greater mutability emerged into intimate relationships once they were freed from the traditional binaries of marital or pre-marital sex, heterosexual or homosexual, committed or promiscuous. Giddens also sees the decline in viewing homosexuality as a perversion and subsequent 'coming out' stories as linked to the removal of sexuality from the realm of nature (Giddens and Pierson, 1998: 145).

The 1970s was also a decade of second-wave feminist movement agitation, which had done much to bring about a situation where this greater mutability and self-fulfilment within sexual life became

evident in Ireland. Groups like the Irish Women's Liberation Movement (IWLM) and Irish Women United (IWU) had adopted the protest strategies of a new social movement culture sweeping across Europe and the USA. Direct action strategies, like bringing contraceptives through Dublin's Connolly Train Station in defiance of the prohibition on their importation, both raised the media profile of their activities and contributed to splits that would eventually lead to the IWLM's demise (Connolly, 2003: 120–21). Legislative progress on women's rights did continue slowly through the 1970s with the passage of a number of Acts that represented a redistribution of power between the sexes.[4] Women also achieved greater economic independence through the 1973 repeal of the marriage bar, which had prevented married women holding positions in the civil service, and the passing of the Anti-Discrimination (Pay) Act the following year (Connolly, 2003: 106; O'Connor, 1998: 32–80).

The gay movement also made significant progress during the 1970s. A new social and political climate that facilitated the emergence of fresh social movements throughout Europe and the USA contributed to the tentative emergence of the Irish gay movement (Ryan, 2006: 88; Rose, 1994: 4–5). Future leaders of the gay movement, for example David Norris and Edmund Lynch, emerged through Trinity College Dublin and the State broadcaster, RTÉ, both institutions offering vital security in employment at a time when public involvement in gay rights threatened livelihoods, family relationships and, in acts of violence and arson, life itself. The aims of the IGRM were twofold: providing a legal service to men charged under gross indecency legislation; and providing a social space in a newly acquired building in Parnell Square, Dublin, that allowed men and women to socialise openly (Ryan, 2006: 97–8; Rose, 1994: 11). A tension emerged within the IGRM as some members felt that increased political agitation focused greater Garda attention on gay men. This situation had previously occurred in Britain, where in the first four years after the passage of the 1967 Reform Bill, convictions for gross indecency increased by 160 per cent (Kinsman, 1987: 143).

The IGRM split and more politically motivated members like Norris left to form the Campaign for Homosexual Law Reform (CHLR), whose single focus was to seek the decriminalisation of homosexuality through the Dáil (Irish Parliament) or the courts. This movement would parallel the establishment of the Campaign

for Homosexual Equality in Britain, which shared a commitment to an extension of social services and strategies to woo the political establishment to help it achieve its aims (Marshall, 1980: 78). It quickly became apparently that seeking change through the Houses of the Oireachtas (the house of political representatives and the Senate) would be futile. When asked if the government intended to re-examine the legislation, Minister for Justice Gerry Collins responded that it did not (Dáil Éireann, 1977). Attention turned to a High Court challenge that came before the court in November 1977. It invoked that a right to privacy was denied to gay men – an argument previously successfully made in the *McGee* case – and claimed that the criminalising legislation made homosexuals unequal citizens before the law (Hug, 1999: 212). The High Court made its judgment in October 1980 when Judge McWilliam ruled against Norris, declaring that the legislation was not unconstitutional and that it was 'reasonably clear that current Christian morality in this country does not approve of buggery or any sexual activity between persons of the same sex' (Ferriter, 2009: 497). Bizarrely, the judge believed homosexuality to be a contagion, whereby people with mere tendencies would be enticed into a more habitual sexual identity as a result of contact with gay men and would be forced to endure the 'sad, lonely and harrowing life' of the exclusively homosexual man (Rose, 1994: 36).[5]

Norris's appeal to the Supreme Court in 1983 also ended in failure. The court's judgment revealed how pervasive the power of both religious and medical discourses remained in the Irish State. The judgment claimed that homosexual acts were unnatural, given that the State, which was founded on a Judeo-Christian tradition, believed the use of sexual organs should be for reproductive purposes only (Flynn, 1995: 37–42). Furthermore, the judgment found that homosexuality should be criminalised due to a belief that the resultant increased promiscuity would contribute to the spread of venereal disease. This part of the Supreme Court decision specifically showed an inability to comprehend that same-sex relationships could be based on monogamy, love or companionship (Ryan, 2011: 180). The final ground on which the Supreme Court rejected Norris's application rested on the belief that homosexuality was an individual disorder that made the afflicted prone to unhappiness, despair, loneliness and suicide. Significantly, the minority judgment of the court observed correctly that it may have been the

legal regime existing in Ireland that had contributed to that despair and unhappiness (Hug, 1999: 214).

Counter-Sexual Revolution

If we are to understand the development of the gay movement in Ireland, we must be cognisant of the wider international context. While Ireland may have been influenced by and have benefited from a relaxation in sexual attitudes, particularly in the USA and Britain, events at home and abroad throughout the 1980s would illustrate how the global would continue to exert and find voice in the local, shaping both the political objectives of the gay movement and the timeline to achieve them. While Western industrial democracies entered into the contentious sexual politics of the 1980s bolstered by significant gains in the advancement of sexual rights in such areas as divorce, abortion and homosexual law reform (Wouters, 2004: 149), Ireland faced a rising tide of conservatism, with just a limited contraceptive bill passed at the opening of the decade. Even Northern Ireland had seen the passage of the Homosexual Offences (Northern Ireland) Order in 1982, following Jeffrey Dudgeon's successful case before the ECHR (McLoughlin, 1996; Hug, 1999: 216). While there were evident successes, however, the extent of the sexual revolution in Britain has been questioned, with Diarmaid Ferriter (2009: 337) claiming that its effects were largely confined to London and the South East, while Jeffrey Weeks (1989: 253–4) points out that British sexual behaviour had remained sexually conservative, with births outside marriage only rising modestly from 5 per cent in 1955 to 8 per cent in 1967.

Time magazine reported in 1984 that the sexual revolution was over (McLaren, 1999: 193). This declaration coincided with an economic downturn on both sides of the Atlantic that marked the end of the post-war boom and the beginning of a wave of economic austerity, strikes and pessimism. Voters turned to conservative leaders, like Reagan and Thatcher, who offered not just an economic but a moral readjustment that would see governments attempt to row back on what was perceived as the excesses of the permissive society (McLaren, 1999: 194). The 1980s represented the outbreak of a culture war, seeing a resurgent campaign against pornography, a rise in conservative men's movements and a rise in campaigns against abortion, culminating in attacks on and bombings of clinics

in the USA. Gay men and lesbians were among the first victims of this backlash, with the advent of HIV/AIDS providing the political cover. The disease was presented by conservatives as evidence that the sexually promiscuous were now paying a terrible price for their transgression, and that the cure lay in a return to faith, monogamy and marriage. American conservatives like Patrick Buchanan saw AIDS as nature 'exacting an awful retribution' (Seidman, 1992: 158). Liberals seized the opportunity to strategically remarket the gay community, with Steven Seidman (1992: 156) arguing that to gain a place within the acceptable moral boundaries of the nation, an image of the 'respectable homosexual' had to be constructed. This involved placing sex firmly within a context of monogamy and romance and a greater assimilation of homosexuality within the dominant values of the USA. There was a similar response in Scandinavian countries, where gay movements now agitated for a return to domesticity, resulting in the introduction of marriage-style rights for lesbians and gay men in Denmark in 1989 (McLoughlin, 1996: 89).

In Britain, the Thatcherite political response resulted in measures such as section 28 of the Local Government Act 1988, which prevented local authorities 'promoting' homosexuality through educational resources as a valid family relationship of equal status to the traditional family unit (Weeks, 1990: 240–42; Weeks, 2000: 155; Richardson, 1998: 91). International gay movements struggled to withstand a conservative onslaught, which, emboldened by the fear generated by HIV/AIDS, sought to roll back legislative gains or justify existing criminalising legislation. The state of Georgia in the USA successfully argued in a federal civil rights case that the criminalisation of homosexuality was vital to protect public health in the context of HIV/AIDS (O'Connor, 1995: 185).

Against this backdrop the prospect of law reform in Ireland seemed remote. O'Connor (1995: 185–6) argues that the advent of HIV/AIDS did not, in fact, hamper or delay the Irish gay movement from achieving decriminalisation in 1993. Research from the World Health Organisation (WHO) proved helpful in this regard, with the WHO's argument that decriminalising measures would actually contribute to greater education about the risk of infection, making the case for decriminalisation more compelling. HIV/AIDS also mobilised a small number of gay activists in organisations such as Gay Health Action (GHA), bringing them into close contact with

a range of government agencies and strengthening institutional contacts (Hug, 1999: 219). This early HIV/AIDS activism led to the establishment, in 1992, of the Gay Men's Health Project, on a statutory basis, within the Health Board, later the HSE (Ferriter, 2009: 504). Efforts were also made to bring greater information about the disease and its sufferers into the public domain in an attempt to lessen the stigma attached to it. In 1989 *Magill* magazine published a diary written by a Dublin man, describing his experience of his diagnosis and grim prognosis of a life expectancy of three to five years. RTÉ's flagship current affairs programme, *Today Tonight*, also carried an interview with a Dublin-born man with AIDS, providing the public with a rare insight into lives that were secret and feared (Ferriter, 2009: 505).

Gay men and lesbians also faced other dangers at this time. Sexually active gay men faced prosecution under gross indecency legislation, with 455 convictions between the years 1962 and 1972 (Hug, 1999: 270). Careers and family relationships were destroyed when newspapers printed the names of those convicted. Nell McCafferty's (1987: 32–3) report on Dublin District Court cases gave a look inside the somewhat bizarre legal situation facing gay men at the time. Her report from 12 September 1975 described two men, one married, observed leaving a cubicle of a public toilet by a Garda. They subsequently found themselves in court, being charged under gross indecency legislation. A psychiatrist was called to give evidence for the younger man, while the solicitor of the married man claimed that 'his wife says they are happily married' (McCafferty, 1987: 33). The judge summed up: 'The law's the law and they broke the law. One answer is prison obviously. If they had been dealt with before a jury, they could have gotten penal servitude.' The men were bound to the peace for a year.

The murder of Declan Flynn in 1982, in an area of Dublin's Fairview Park known to be frequented by gay men, created a climate of fear and distrust of the judiciary. When suspended sentences were handed down to his killers, widespread outrage and protests followed (Ferriter, 2009: 499; Rose, 1994: 20–21). In his summing up of the case, the judge said that 'this could never be called murder' (Crone, 1995: 67). Confidence in the Gardaí was undermined following the murder of another Dublin man, Charles Self, in the same year as Flynn was killed. The investigation into Self's murder led to over 1,500 gay men being interviewed, photographed and

fingerprinted in an exercise that appeared to have more interest in personal surveillance than genuine investigation. No one was charged for the murder (Rose, 1994: 19). Acts of violence continued into the 1990s, with two gay activists, Suzy Byrne and Junior Larkin, attacked after an appearance on the Irish television chat show, the *Late Late Show* (Moane, 1995: 87).

In spite of this hostile background, progress was being made. The National Gay Federation (NGF) was set up in 1979, with a subgroup established to document the history of the movement and the experience of ordinary gay lives. This became the forerunner to the Irish Queer Archives (IQA), now housed in the National Library of Ireland.[6] In 1981 the NGF participated in the first national gay conference, which was organised by the Cork Gay Collective, a group of mainly gay, left-wing men keen to embrace a more radical sexual politics (Rose, 1994: 16–17). The NGF changed its name to the National Lesbian and Gay Federation (NLGF) in 1991.

The cultural wars fought in the USA about sexuality found a more local and nuanced voice in Ireland. The exaggerated fears of the spread of a permissive society mobilised anti-abortion activists to campaign for the insertion of a constitutional amendment to outlaw its practice (Hesketh, 1990: 5–6; Fahey, 1999: 63). The 1983 abortion referendum was marked by a divisive campaign and the ambiguous wording of the amendment led to a further four constitutional referenda. Furthermore, in 1986 the Irish electorate substantially rejected a referendum to remove the constitutional ban on divorce (Fahey, 1999: 64; Ferriter, 2005: 718–19). It was 1995 before the ban was lifted, following a referendum, by the slightest margin: 50.3 per cent for and 49.7 per cent against.

Sexual Citizenship and the European Court of Human Rights

After exhausting all legal avenues in Ireland, Norris and the campaign for decriminalisation moved, as Jeffrey Dudgeon had done earlier, to Europe. The vindication of Irish sexual citizenship on a European stage raises some interesting questions. While citizenship debates had previously been confined to the public sphere, there was a growing interest in the everyday and private lives of individuals. Ken Plummer (2001: 238) argues that this new form of citizenship 'examines the rights, obligations, recognitions and respect around those most intimate spheres of life'. For Plummer,

core issues would include who to live with, how to raise children and, crucially in the context of this chapter, how to be an erotic person.

This transition in the way sexual citizenship was thought about was evident in Ireland in the period under discussion. Individuals came to understand their intimate choices within a context of a self-fulfilment, rather than through the paradigm of repression of the self and denial of the body as a source of multiple pleasures, as promoted in the teachings of the Catholic Church (Ryan, 2011: 39). This individualism, not to be misunderstood as selfishness, manifested itself in greater intimate choice in Ireland – the opportunity to 'come out' as gay to one's family and friends; the opportunity to deny parental expectations and move beyond one's parish, city or country; the opportunity to chart a new life, independent of the community and family ties that previously exerted so much pressure. This choice of *who* to have an intimate relationship with – whether heterosexual or homosexual – was central to this individualism, and the process by which these choices became publicly recognised was central to the extension of sexual citizenship. By extending this concept of citizenship, questions are raised about rights and responsibilities and the mechanisms by which people should be included or excluded from the extension of the benefits it bestows. In Plummer's analysis (2001: 248–9), globalisation is key to understanding what appear to be two contradictory forces at work moulding intimate lives. One is the *local*, which contributes to a distinct cultural footprint on sexualities around the world. In Ireland, throughout the 1970s, there was a curious blend of allegiances – to family, religion and community – that contributed to 'coming out' stories that were different from those told in Europe or North America (Ryan, 2003).

The second element of the new form of citizenship identified by Plummer is a *'McDonaldisation of intimacies'* (Plummer, 2001 [original italics]), whereby there is a sameness in sexual identity and, I would argue, in the rights bestowed through the extension of a sexual citizenship by globalising entities like the ECHR. In 1988 the ECHR ruled that an individual's sexual life was part of his/her private life under Article 8 of the European Convention on Human Rights, and that Ireland stood in contravention of this Article in its denial of homosexual privacy (Ryan, 1997; Hug, 1999: 217). The focus then turned to how successive Irish governments would seek

to formulate a legislative solution that would appease the ECHR, the newly formed Gay and Lesbian Equality Network (GLEN) and an increasingly radicalised lay Catholic movement that would certainly oppose any change to the existing legislation.

Diane Richardson (2000: 107) identifies three broad themes within the sexual citizenship discourse that are also helpful in tracing the campaign for gay rights in the Irish context. The first – the right to participate in sexual activity – is the most relevant to this part of the campaign, where gay men sought the right to engage in sexual relations, invoking an essentialist belief that the physical need for a sexual life is a fundamental right. Given that gay sex remains illegal in many states in America and in other jurisdictions, it is a right that is still being contested.[7] These minimal rights to have sex without fear of prosecution have traditionally come with privacy exceptions – such as Britain's Reform Act 1967– where recognition is given dependent on no further rights being given in the public sphere, or what Richardson (2000: 110) calls the 'I don't care what they do in their own homes as long as I don't have to see it or hear about it' approach.[8] We will return to Richardson's (2000: 126) other theme – the right to publicly recognised sexual relationships – later in the chapter, when discussing the fight for civil partnerships, marriage and the recognition of foreign same-sex marriages in Ireland.

Decriminalising Homosexuality: The Reform Options

As highlighted in Chapter 3, despite the ECHR judgment in 1988, the Irish State showed a distinct lack of urgency to comply with the ruling. The government asked the Law Reform Commission to examine various legislative reform options. The Commission reported back in 1990 that the 'same legal regime should obtain for consensual homosexual activity as for heterosexual and that, in particular, no case has been established that the age of consent (seventeen years) should be any different' (Robson, 1995: 52). At the time it may have seemed unlikely that the Commission's recommendations would be heard, but three years later the political climate changed when a Fianna Fáil–Labour coalition came to power. The new government was eager to promote a reform agenda through the establishment of a Minister of Equality and Law Reform, and to capitalise on the election of Mary Robinson as the first female President of Ireland (Dunphy, 1997: 249).[9] Gay

reform was, Dunphy argued, a low risk for both political parties as it did not require a constitutional referendum and would help court an urban middle-class vote that had been mobilised during the Robinson election campaign (Dunphy, 1997).

The tactics employed by GLEN also facilitated this reform agenda. It located its campaign within existing political structures while courting high-profile allies. Since its inception, the Irish gay movement rejected a politics of confrontation that had been the hallmark of campaigns in Britain and the USA in the 1970s (Ryan, 2006: 96). Groups like the Gay Liberation Front (GLF) in the USA campaigned on a broad platform of racial and sexual exploitation, with a loose organisational structure. This was not a strategy suited to the contours of Irish politics. GLEN's campaign strategy best suited the still parochial, close-knit nature of Irish politics. Furthermore, like the previous campaigns of the CHLR, the numbers involved in GLEN remained small (Dunphy, 1997: 252), which meant that confrontation was not really a viable option. The strategy adopted delivered results, with GLEN forging alliances and garnering the support of the Irish Congress of Trade Unions (ICTU) and the Irish Council for Civil Liberties (ICCL). ICTU had launched a policy document on lesbian and gay rights in the workplace in 1987, while the ICCL had published a document in 1990 calling for the decriminalisation of homosexuality (Rose, 1994: 25–7; Robson, 1995: 50). By locating its campaign within a wider context of social exclusion and human rights, GLEN garnered support from 40 organisations, as various as those representing the Travelling community and persons with disabilities.

GLEN also grounded its campaign in a subversion of the concepts of family and nationalism, which were particularly close to the Fianna Fáil heartland. GLEN continued to emphasise that the legislation criminalising homosexuality was, in fact, a remnant of Ireland's colonial past. Rose (1994: 3–4) describes how there 'were real and positive traditional Irish values, arising from the struggle against colonialism ... and that the demand for equality was attuned to this heritage'. Rose also recognises that such recourse to a more tolerant and egalitarian past was political opportunism, unsupported by the historical record. Indeed, the nationalist press had been the most ferocious in capitalising on a series of homosexual scandals that had beset the Dublin Castle regime in 1884 (Ryan, 2005: 40–42).

The government faced two choices when considering decriminalisation: one was to follow the British model of retaining an unequal age of consent with a restrictive proviso that such sexual activities take place 'in private'; the other was to introduce equality between both sexual orientations (Weeks, 1990: 176). It was a choice that Norris repeatedly emphasised to his fellow parliamentarians (Hug, 1999: 225). The use of the word 'family' in the GLEN campaign was also significant. This was not a by-product of the growing individualism discussed earlier; rather, through the use of terms such as 'sons and brothers' and 'daughters and sisters', it emphasised how decriminalisation would be in keeping with Ireland's traditional respect for the institution of the family. Dunphy (1997: 256) argues that the subtext of the campaign centred on the message that individual families had shown compassion to their gay relatives and now 'Ireland as family' should do the same.[10] Not everyone was convinced that a change in the law posed no danger to the traditional family. The Archbishop of Dublin, Desmond Connell, had described homosexuality in 1990 as 'a disorder and an affliction' (Rose, 1994: 27). The Catholic hierarchy issued a statement outlining its objections to the proposed legislation to decriminalise homosexuality, stating that 'new laws cannot make what is wrong right' (Hug, 1999: 225).[11] The most vocal opposition to the decriminalisation proposals came from lay Catholic groups such as Family Solidarity (1990), which had circulated its pamphlet to every TD (member of Parliament). The organisation warned against decriminalisation in a time of AIDS and suggested that decriminalisation would mark the beginning of a series of liberal legislative gains in the fields of adoption and education (Hug, 1999: 226). Other organisations, for example the Knights of Columbanus, played a more secretive role in attempting to influence the direction of public policy with regard to sexuality, particularly homosexuality (Ferriter, 2009: 465; Rose, 1994: 29).

The Criminal Law (Sexual Offences) Bill 1993 repealed sections 61 and 62 of the 1861 law and section 11 of the 1885 law, putting in its place an equal age of consent of seventeen years old, with no privacy exceptions and with no exemptions within the armed forces (Ryan, 1997; Rose, 1994: 57–8; Hug, 1999: 227). Given that the Fianna Fáil–Labour government had a majority of 41, the passage of the bill was not in dispute, but it was the ease with which it passed, without a vote being taken, that was extraordinary (Ryan, 1997).

A vote would have been required if ten deputies requested it; only one did. While there were some rumblings within Fine Gael (put forward by Gay Mitchell, Norris's presidential campaign adversary some eighteen years later) about an amendment that would seek a higher age of consent, such pressure was resisted within the party.

During the campaign for decriminalisation, David Norris had emerged as both a public figure able to communicate the aspirations of the gay community to a wider audience and as a role model within the gay community. No such similar figure emerged within the lesbian movement, contributing to a continued perceived invisibility. The reasons for this are complex. Some, like writer and journalist Nell McCafferty, have felt uncomfortable with the term 'lesbian'. The collective energies of Irish lesbians had also been spilt across a diverse range of activism, most obviously women's liberation, but also pro-choice and anti-nuclear Greenpeace campaigns (Crone, 1995: 61). The result was often unsatisfactory, leading lesbians to feel they had committed themselves to campaigns for reproductive rights within the broad church of the women's movement, while believing that their sexual rights were not fully embraced or even named in return, particularly in the Irish Women's Liberation Movement (IWLM) (Connolly 2003: 122). Groups like Irish Women United (IWU) did call for the right of women to have a 'self-determined' sexuality, yet the commitment to lesbian rights remained opaque; although according to Mary Dorcey, 40 per cent of the IWU was lesbian (Dorcey, 1995: 37). According to Connolly (2003: 132), the IWU struggled to find agreement on issues because of the divergent feminist ideological commitments of its members. The disbandment of IWU brought about the emigration of the most radical lesbians from the group (Crone, 1988: 342). By the 1980s lesbian activists had splintered from the mainstream women's movement, with Crone (1988) pointing to a women's conference on lesbianism in 1978 as a significant milestone in carving a unique space outside the confines of the traditional women's movement. Crone's (1995: 66) own appearance on the *Late Late Show*, though seen as inspirational by a generation of Irish lesbians, came at a high personal cost, bringing her familial rejection and threats of violence. Other women also splintered from IWU, creating new groups like Women's Right to Choose and the Rape Crisis Centre (Connolly, 2003: 141).

Several lesbian groups made written submissions to the Second Commission on the Status of Women (1993). Dublin Lesbian Line's oral presentation outlined the priorities for the lesbian community, including funding, legislative change and educational programmes that would include realistic portrayals of lesbians in education and training (Moane, 1997: 440). In 1991 Lesbians Organising Together (LOT) was founded and became the first national network, complete with office, archive and outreach services for talks with schools or other groups. Groups affiliated with LOT included the Dublin Lesbian Line, First Out and the Lesbian Equality Network (Moane, 1995: 93–4). The following year Mary Robinson invited members of LOT to a reception in Áras an Uachtaráin for the gay and lesbian community, although those who attended chose not to release their names to the press (Ferriter, 2009: 515), a sad reminder that there were still high personal costs to be paid for public visibility.

Back to the Courts: The Status of Foreign Same-Sex Marriages in Ireland

A key catalyst in the development of the gay movement in Ireland was the harnessing of individual resources and, more important, the willingness of individuals to bear personal, emotional and financial costs in the pursuit of collective aims (Ryan, 2006: 93–4). After their marriage in Canada in 2003, Ann Louise Gilligan and her wife, Katherine Zappone, returned home to Ireland to seek recognition of their marriage in respect of a range of tax allowances made available to married heterosexual couples. Gilligan and Zappone wrote to the Revenue Commissioners to request that their tax status be changed to reflect their marital status. The letter of reply, addressing the couple as 'Dear Ladies', made it clear that the Revenue Commissioners would not become an agent of transformative change (Gilligan and Zappone, 2008: 256). Following this rejection by the Commissioners, the couple applied for and were granted a judicial review.

This next phase in the legal battle for same-sex rights raises some important issues. First, given the earlier discussion of the invisibility of lesbians in the history of the gay movement, it was significant that this phase was spearheaded by two women. Gilligan and Zappone (2008: 253) reviewed cases in other jurisdictions and realised that

similar cases had been taken by a number of couples, thus sharing the personal and financial risks and the media attention involved in such a case. The search for similar couples to participate in their court case ended in failure, with candidates discouraged by the notoriety the case would likely generate. Like Norris before them, Gilligan and Zappone were forced to head the campaign alone in the absence of any national organisation campaigning for gay marriage in Ireland (Gilligan and Zappone, 2008: 254).[12] The couple concluded that 'while we clearly took the case on our own behalf, we also took it on behalf of those who might not be able to withstand the human cost – financial and otherwise – of engaging in such democratic action' (Gilligan and Zappone, 2008: 251–2).

Some feminist writers have been critical of lesbians who have pursued equal marriage rights, arguing that it is middle-class gay men who are most likely to be in a position to support the cost of pursuing legal action and indeed are more likely to be the beneficiaries of a range of rights that gay marriage can bestow (Ettelbrick, 1989; Auchmuty, 2004). They argue the legal campaigns for same-sex marriage serve the interests of middle class men more than women, with men being more likely to hold jobs that provide spousal health benefits or pension entitlements (Ettelbrick, 1989: 166). Auchmuty (2004: 111) goes further, claiming that the debate for gay marriage has been driven in the USA and Britain by gay men, both in the public sphere and in academia. Given such a male focus it is unsurprising, Auchmuty (2004: 105) argues, that the radical feminist critique of marriage is now conveniently seen to be obsolete. These critiques, she believes, have consistently revealed that marriage has 'been shown to endow men with a better lifestyle, greater freedom and power, while it has the opposite effect on women, limiting, impoverishing, and rendering them vulnerable to abuses of power by their husbands'.

The judgment of the High Court in the Gilligan–Zappone case came in October 2006, when Judge Elizabeth Dunne ruled that the couple did not have the right to marry in Ireland under the 1937 Irish Constitution, which defines marriage as between a man and a woman. In October 2011 the Supreme Court refused to include a challenge to the Civil Registration Act 2004 as part of their appeal to the Supreme Court, and this appeal was subsequently withdrawn. Zappone and Gilligan then initiated a new High Court appeal to challenge the constitutionality of the provisions of the Civil

Registration Act 2004 and the Civil Partnership Act 2010, both of which prohibit marriage for same-sex couples. It is this new challenge which is currently before the High Court. To understand the presentation of the case before the High Court and the wider court of public opinion, we must return to the concept of sexual citizenship. Citizenship rights are garnered, or denied, through bureaucratic and political manoeuvring, 'through rituals of modern political debate', a process that has the potential to identify 'good' and 'bad' citizens (Hubbard, 2001: 53). Gay men and lesbians have traditionally found themselves in the latter category, in the company of the sex worker, the pornographer or the single mother, among others. Indeed, the Criminal Law (Sexual Offences) Act 1993 combined the decriminalisation of homosexuality with what many would consider regressive measures against prostitution. Richardson (1998: 90) argues that these 'partial' citizenship rights, for example the right to engage in sex, as discussed earlier, are dependent on gay men and lesbians not seeking public recognition and remaining within the private sphere; as Sylvia Walby (1994: 389) points out, the concept of citizenship is rendered obsolete in a private setting.

The traditional heterosexual, married, middle-class, nuclear family is the model of good citizenship (Richardson, 1998: 92). Gilligan and Zappone's relationship was, arguably, recasting the image of the gay and lesbian couple in the public imagination, and bringing it closer to the desirable model. No longer were gay men and lesbians viewed as a contagion that presented a threat to public health through multiple sexual partners and a defiance of monogamy, as outlined in the High Court judgment against Norris in 1980. In this stage of the campaign, Gilligan and Zappone represented the desire of many in the gay and lesbian community for recognition of relationships built upon domesticity, fidelity and, in their case, a 23-year commitment to each other. Gay men and lesbians wanted to come in from the cold, to become 'good citizens' and to embrace a world of joint tax assessment, inheritance and divorce. There was cross-party agreement within the political establishment that they should be allowed to do so. Gilligan and Zappone represented a cohort of gay and lesbian people who wanted to move from being what Richardson (1998: 88) describes as 'partial citizens' – in that they pay the same taxes as heterosexual people yet are denied key entitlements from the distribution of those taxes and the ability to marry and foster children – to being people included

within a traditional model of citizenship embracing civil, political and social rights.

Gilligan and Zappone explained their rationale for choosing marriage after considering the implications for themselves as feminist women familiar with the feminist critique of marriage, which viewed it as an institution beyond redemption. The couple understood marriage to be a changing institution, not exclusively confined to any one cultural or historical interpretation: 'understanding the purpose and consequences of marriage, aspiring to live as best we could the ideals of this time-honoured institution, we wished to avail of this opportunity, to celebrate our love and have full legal recognition' (Gilligan and Zappone, 2008: 239–40).

Gilligan and Zappone were not the only feminists to have grappled with a critique of marriage as a heteropatriarchal institution. Prominent gender and sexuality academics Celia Kitzinger and Sue Wilkinson (2004) outlined their rationale for choosing marriage in Canada instead of a civil partnership in Britain in an autobiographical article published in 2004. Like Gilligan and Zappone, the couple married in 2003 and wanted the British authorities to recognise their Canadian marriage in a similar manner to heterosexual couples. Kitzinger and Wilkinson (2004: 130) reject the cohabitation requirement implicit in many civil partnership models, including the UK, arguing that gay men and lesbians are pressurised to prove that their relationships are 'real'; a burden not borne by heterosexual married couples. Such a requirement also exists in relation to immigration criteria in countries like Australia, where gay couples do have marriage rights equal to heterosexual couples' but the onus on proving a 'genuine' relationship for the three categories of partner visa (i.e. married, prospective marriage and interdependent) is based on traditional heterosexual relationship criteria, such as a shared home and a merging of financial resources (Holt, 2004: 32).[13] Gay men and lesbians, whether married or not, must furnish evidence of a long-term, committed, exclusive relationship, shared financial obligations and proof, too, that the relationship has been socially recognised by wider family, peers and colleagues. More fundamentally, though, Kitzinger and Wilkinson state that 'from a human rights perspective, equal access to marriage for all citizens is a straightforward human right' (Kitzinger and Wilkinson, 2004: 132), and despite a similarity in entitlements, the exclusion of gay men and lesbians from marriage is hugely symbolic.

This 'rebranding' of the civil partnership exercise that separates gay men and lesbians from marriage is, of course, politically expedient, deflecting criticism from LGTB groups about the exploitative nature of marriage, while conservative critics are happy that the 'sacredness' of marriage is retained for heterosexuals. Kitzinger and Wilkinson (2004: 135–6) argue that while early feminist critiques of marriage have now been made redundant by a range of equality measures secured through feminist agitation, there has been no comparable critique of inequalities existing within civil partnership relationships, which are based on similar exclusivity and cohabitation expectations of heterosexual marriage. The couple argue (Kitzinger and Wilkinson, 2004: 140), as do Gilligan and Zappone (2008), that socially constructed institutions of family and marriage are not the preserve of any one social group; they can be reimagined and divested of their gendered connotations.

The Civil Partnership Bill: Enshrining Inequality or a First Step to Full Civil Marriage?

The publicity surrounding the Gilligan and Zappone case forced a wider societal debate on the rights of same-sex couples in Ireland. It was a debate that was occurring within an international context, because an increasing number of European states had extended sexual citizenship rights to create new citizens who may, in the future, seek to have those rights upheld in Ireland (Eskridge and Spedale, 2006). Richardson (2000: 126–7) develops three broad themes within sexual citizenship discourse. The first of these are claims made based on relationships and, more specifically, the right to publicly recognised sexual relationships. The ideological difficulties within gay and lesbian communities in embracing a legislative model that would provide for social and legal benefits have been discussed earlier in the chapter. Newly married same-sex couples, like Gilligan and Zappone, provided the courts and legislators with a conundrum as they sought to try to define these rights and obligations within constitutional parameters. This forced politicians to take a stand. Taoiseach Bertie Ahern, for example, speaking in 2004, supported the extension of tax and inheritance rights to gay and lesbian couples, stating that he thought this was the 'fairest, caring and Christian way to deal with this' (BBC News, 2004).

There had been a number of reports published since 2000 that were critical of government inaction in dealing with the issue of partnership recognition for lesbians and gay men. In 2000 the Equality Authority published a report that catalogued a list of discriminations faced by same-sex couples with regard to children, property entitlements, workplace benefits and taxation. A further report, two years later, formally called on the government to legislate to give full recognition to same-sex couples (Equality Authority, 2002). In 2003 the National Economic and Social Forum (NESF) issued a report expressing concern that the absence of such formal recognition for gay and lesbian couples would become an impediment to achieving LGBT equality (NESF, 2003). It recommended to the government that the 'Law Reform Commission should include consideration of the feasibility of different models to achieve equal rights for same-sex partnerships, drawing on the experiences of other countries which have recently legislated' (NESF, 2003: 12). The Law Reform Commission had also been asked by the government to advise on the issue of partnership recognition, and its 2004 report suggested a partnership scheme bestowing marriage-style rights to couples cohabiting for a minimum of three years, albeit the scheme could not be referred to as marriage for constitutional reasons (Law Reform Commission, 2004). In 2006 the Irish Human Rights Commission suggested that a constitutional referendum to overcome these difficulties in granting full civil marriage would be feasible, but that the minimum requirement would be a partnership registration scheme (Walsh and Ryan, 2006). In the same year the ICCL published *Equality for all Families*, a report that was sharply critical of the treatment of non-traditional families in Ireland (Irish Council for Civil Liberties, 2006). It suggests that recognition for same-sex partnerships should be a key concern for the country in supporting relationships of love and care.

When a Fianna Fáil–Green Party coalition government came to power in June 2007, a commitment to pass civil partnership legislation was included in the negotiated Programme for Government. This decision was based, in part, on the report of the Working Group on Domestic Partnership, established in 2005 by the Minister for Justice, Equality and Law Reform, Michael McDowell TD, which recommended a civil partnership scheme as opposed to gay marriage, which would be 'vulnerable to constitutional challenge' (Working Group on Domestic Partnership, 2006). Even this

limited civil partnership was threatened with legal challenge when the Catholic Primate of Ireland, Cardinal Sean Brady, stated in June 2008 that the Catholic Church would consider supporting a constitutional challenge to any proposed partnership legislation (RTÉ, 2008). The following year the government published the Civil Partnership Bill, to allow same-sex couples to register their partnerships and thereby avail of a range of protections and rights and also comply with significant obligations to financially support each other during and after the dissolution of the civil partnership. Courts were empowered to make orders in respect of maintenance, property and pensions. The bill gave civil partners the option of having a joint tax assessment, similar to married couples. There is no residency requirement attached to the civil partnership scheme and couples with foreign marriages are automatically recognised under the conditions of the scheme. As highlighted in Chapter 3 and discussed in more detail in Chapter 7, there is no provision that a civil partner's relationship with their non-biological child would gain any greater legal status.

While the Minister for Justice, Dermot Ahern TD, believed the legislation 'struck the right balance', it was criticised by the Director of Amnesty International in Ireland, Colm O'Gorman, who said he believed it enshrined in law discrimination against gay men and lesbians, particularly in its failure to offer protection to the children of same-sex couples (RTÉ, 2009). The chairperson of the National Lesbian and Gay Federation (NLGF, 2009), Ailbhe Smyth, stated that 'civil partnership will fuel anti-gay sentiments by signalling: "Yes, you are different."' Ordinary gay and lesbian people voiced their displeasure with the bill, too, and five thousand members of the public joined a protest march in Dublin on 9 August 2009. The suggestion by the Catholic bishops that TDs should be allowed a free vote on the issue was greeted with derision by Minister of the Environment and Green Party leader John Gormley TD, who stated that 'he thought we had left the era of Church interference behind us' (RTÉ, 2010). The bill passed all stages in the Dáil on 2 July 2010, without a vote. Minister Dermot Ahern noted in the Dáil that 'This is one of the most important items of civil rights legislation that has come before the House for some time. It makes a clear and powerful statement to gay people that they will never again have their status or relationship ignored' (Dáil Éireann, 2010: 12). John Gormley described it

as 'truly an historic day. It is a joyous day for so many same-sex couples throughout the country. I convey my thanks to the organisations which campaigned so hard for this, including the Gay and Lesbian Equality Network, Marriage Equality, LGBT Ireland and others' (Dáil Éireann, 2010: 12).

The debate about civil partnership versus gay marriage played out very differently in Britain. Leading gay rights advocacy group Stonewall argued strongly for the introduction of civil partnership, seeing it as a twenty-first-century means of recognising modern relationships that was preferable to expanding the concept of marriage to incorporate gay and lesbians, as had been done in Canada, for example (Shipman and Smart, 2007: 2). The Stonewall strategy was designed to avoid criticism of aping a patriarchal institution while at the same time being able to differentiate partnerships from marriage in debates with the religious right. Similarly, Peter Tatchell of gay lobby group OutRage! argued for a 'queer' rejection of marriage in its entirety, seeking instead an alternative means of recognising the relationships of both gay and straight couples that would be equal in status and rights to marriage. A Cabinet Office questionnaire revealed that the civil partnership proposals had huge support among the gay and lesbian community, with 86 per cent of respondents stating that they would consider registering (Kitzinger and Wilkinson, 2004: 128–9). The ordinary gay and lesbian couples whom Shipman and Smart (2007: 4) interviewed were concerned less with the ideological status of civil partnership versus marriage and more with pressing everyday and personal concerns. Couples identified different motivations for their decision to embark upon a civil partnership, which included love, acknowledging mutual responsibility, the importance of family recognition, legal rights and a public statement of commitment.

Marriage Equality: The Next Phase

Ironically, it was the decision to legislate for civil partnership that galvanised the first national campaign for gay marriage in Ireland. Marriage Equality was founded in 2008 and campaigns for the extension of full civil marriage rights to gay and lesbian couples. The organisation disputes the view put forward by the Working Group on Domestic Partnership (2006) that a constitutional referendum would be required to legislate for the extension of civil

marriage rights to gay men and lesbians. Notwithstanding debates about whether gay marriage undermines gay and lesbian identity (Herman, 1993: 250), or reinforces a patriarchal social organisation based an exclusive binary relationship (Auchmuty, 2004: 122), or promotes assimilation into a model of sexual citizenship that has traditionally proved so hostile for gay men and lesbians, there remains little doubt that civil marriage will be the next stage of the campaign. It will also be challenging. With legal opinion suggesting that the instigation of gay marriage would require a referendum to change the Irish Constitution, any future government would approach the issue with great trepidation. Although surveys report high levels of support for gay marriage, a campaign would be undoubtedly divisive (O'Brien, 2010). Reynolds' analysis (2007) of the media coverage in Ireland following the publication of a photograph of a German couple at their civil partnership revealed that many readers were aggrieved, particularly by the appropriation of the symbolism of traditional marriage, in this case the cutting of a wedding cake.

In Britain, Auchmuty (2004: 116) argues that full marriage rights for gay men and women is now only a matter of time, partly because marriage has been divested of all religious and social status, becoming merely a lifestyle choice, and partly because of its dwindling popularity as an institution. Marriage in Britain is now so unfashionable that numbers getting married have fallen to their lowest level for more than a century (Carter, 2003). The same cannot be said for Ireland. The 2011 Census in Ireland revealed that between 2002 and 2011 the marriage rate had remained stable at 37 per cent (Central Statistics Office, 2011: 21). It would also be naïve to believe that the introduction of civil partnership, although a significant development, will change the everyday lives of gay men and lesbians in schools, workplaces or on the streets. Despite the progress witnessed in this country, the decision of young people to 'come out' is still fraught with fear of rejection. Research into the experience of Irish second-level students by Norman et al. (2006: 26) revealed a high level of tolerance among teachers of pervasive homophobic name-calling in the classroom, while some parents expressed 'sadness and disappointment' if they discovered their child to be gay. A majority of students had a fear of anything associated with homosexuality being discussed within the school (Norman and Galvin, 2006: 27).

The same year as the Civil Partnership Act was passed, Cork Senior hurler Dónal Óg Cusack published his autobiography, *Come What May* (published by Penguin Ireland in 2009), describing his three All-Ireland victories and his decision to come out as a gay man to his teammates and family. Cusack's father greeted the news with incredulity, telling him, 'but you don't, you're into hurling' (2009: 156), as if the sport that had so embodied a vision of Gaelic masculinity would preclude any sexual diversity among the starting fifteen players.

While the passage of the Civil Partnership Act, although limited in provision, was momentous, for a time in 2011 it appeared that Ireland would go even further and elect David Norris as President of Ireland. If this had happened, he would have been the first openly gay man to hold the office. Early polls consistently showed that Norris was the people's favourite candidate (Drennan, 2011). Revelations that Norris had sought clemency from an Israeli court for his ex-partner, who stood guilty of the statutory rape of a fifteen-year-old boy in 1997, led to his withdrawal from the race. Although Norris re-entered the race in September and reclaimed a leading position in the polls, he struggled in television debates to put behind him his clemency or his refusal to publish all of his correspondence to the Israeli court (Taylor, 2011). On election day, he received 6.2 per cent of the vote.

Conclusion

This chapter has put forward the argument that the progress of the gay movement in Ireland over the last 31 years has been dependent on local and global cultural and political factors, which have fashioned both standardised and unique campaign outcomes. At a time when the Christian Right exercised greater influence over sexual politics in the USA, for example, the institutional power of the Catholic Church in Ireland came under increasing pressure from secularisation and experienced diminished authority arising from clerical sexual abuse scandals. The concept of sexual citizenship (Richardson, 2000) was employed to illustrate how homosexual individuals sought a vindication of a range of rights, from the right to have specific forms of sex to recognition for same-sex relationships in a political climate where citizenship claims would increasingly be contested in the private, as opposed to the public,

domains. This would manifest itself in legal claims to the High and Supreme Courts in Ireland and to the ECHR, illustrating the transnational scope of sexual rights in the late modern age.

We also discussed the differing opinions on civil partnership, both in Ireland and Britain and within gay and lesbian communities. These differences reveal the tensions within lesbian feminism over the extent to which the very concept of marriage can be embraced or rehabilitated, with contributors offering academic but also autobiographical accounts to explain why the intangible, symbolic nature of marriage matter. For those committed to full civil marriage in Ireland, this aspiration now rests on the outcome of the Gilligan and Zappone case, currently before the High Court, and the willingness of subsequent governments to legislate accordingly. Both outcomes are uncertain. Nonetheless, sexual citizenship rights in Ireland continue to be influenced by the global as much as by the local. In this context, commitments by the British Conservative–Liberal Democrat coalition government and by French President François Hollande to the introduction of gay marriage may prove significant.

Notes

[1] The full title of the Act is the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Read the Act at <http://www.irishstatutebook.ie/2010/en/act/pub/0024/index.htm>.

[2] Jeffrey Dudgeon was made an MBE by Queen Elizabeth II in the 2012 New Year's Honours list for services to the lesbian, gay, bisexual and transgender communities.

[3] *See* Freedman (1995) for an overview of Norris's life.

[4] Core pieces of legislation included: the Maintenance Orders Act 1974; the Family Law (Maintenance of Spouses and Children) Act 1976; and the Social Welfare Act 1974, which transferred the legal right of children's allowance from fathers to mothers. All of these legislative changes represented a redistribution of power between the sexes (Connolly 2003: 108).

[5] I have argued in my analysis of problems about homosexuality written to 'Agony Aunt' Angela Macnamara that it was this distinction between a homosexuality that could be determined as 'transient' or 'congenital' that remained key in determining what advice was dispensed (Ryan 2011: 170–78).

[6] *See* <http://www.nlgf.ie> and <http://www.irishqueerarchive.com>

[7] Other groups, for example disability campaigners, similarly argue for the right to a sexual life often denied within domestic and residential care

home settings (Richardson, 2000: 109). (*See also* Chapters 14 and 15 in this book.)

[8] Even in liberal democracies not all of these claims are realised: a group of British men involved in consensual sadomasochistic acts were convicted under the Offences Against the Person Act, a conviction upheld in the ECHR, which ruled that the right to protect health had primacy over the right to privacy in this case (Richardson, 2000: 112).

[9] Robinson had been a key campaigner for reproductive rights while in the Senate and had, in a legal capacity, represented Norris during his ECHR appeal.

[10] Indeed, it had been much reported that the rapport between Phil Moore, representing the parents of gay and lesbian children, and the Minister for Justice, Máire Geoghegan-Quinn TD, was influential in persuading the government to reject British-style 'reform' compromises (Robson, 1995: 55).

[11] However, the Church's power and its position as moral adjudicator of the Irish nation had been weakened since the resignation of the Bishop of Galway, Eamon Casey, the previous year when it became known he had fathered a child with an American woman (*see* Hilliard, 2003: 42). It was a decline in power that would continue throughout the decade when far more devastating allegations of clerical child sex abuse and institutional collusion emerged.

[12] Although Gilligan and Zappone stood before the court alone, they received support from a wide range of individuals and organisations, such as the Human Rights Commission, National Lesbian and Gay Federation and Labour LGBT, among others.

[13] Australia recognises three categories of partnership visa: spouse, prospective marriage and interdependent. The last refers to mutually dependent relationships and is the visa most often applied for by gay men and lesbians.

CHAPTER 5

Legal Recognition of Preferred Gender Identity in Ireland: An Analysis of Proposed Legislation

Tanya Ní Mhuirthile

Introduction

In order to come *sui juris*, to be recognisable by the law, one must define oneself in a manner the law can comprehend. At present, the law divides people into two categories: male and female (Civil Registration Act, 2004, Schedule 1). However, nowhere in legislation are these terms defined. Nor is it clearly explained whether an individual must be male in order to be legally recognised as a man. This chapter investigates the question of legal gender recognition in Ireland. It teases out the manner in which Irish case law has defined male/female and man/woman for legal purposes. Emerging debates in international human rights discourse are analysed to provide a critique of the current legal situation in Ireland, and the report of the Irish Gender Recognition Advisory Group (GRAG) is examined to ascertain how this position might be reformed (Gender Recognition Advisory Group, 2011).

Terminology

Prior to engaging in an analysis of the question of legal gender recognition, it is first necessary to clarify some terms that will be used repeatedly in this chapter.

The first terms to explain are 'sex' and 'gender', which are often used interchangeably. For the purposes of this chapter, 'sex' refers to biological considerations, while 'gender' refers to social considerations. With this as a framework, 'male' and 'female' are terms