

Property Rights and the Constitutional Value of the Marital Family in the Irish State

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2 INTRODUCTION AND METHODOLOGY

There will always be those on the fringes who may not benefit from the structure of the law in how it reflects structures in society. However, society changes rapidly, and there is increasingly a movement towards a broader understanding of family which encapsulates the complicated dynamics and relationships between people regardless of genetics or their marital status. The principles of the Rule of Law dictate that legal rules and systems should continuously adapt to changing social demographics to ensure that rules and structures do not become arbitrary, unfair, and outdated. This research essay follows a socio-legal research methodology, in that the 'analysis of law is directly linked to the analysis of the social situation to which the law applied'.¹ The social situation in this research area is marriage as a social status, and the particular legal area is the system of property rights in the Irish State. Using this method of analysis, I am prompted to ask the following questions; firstly, what is the effect of the property law system on marriage as a form of social order and vice versa, what is the effect of marriage on the system of property law? Secondly, what is the effect of property law on attitudes, behaviours, institutions, and organisations relating to the maintenance and change of marriage as a social marker, and again the inverse of this; what are the effects of the maintenance and change of marriage in society on our system of property law?

Housing law and policy has been in the hot seat of political and social debate in Ireland for many years as the Government rushes to react to each new crisis, including the Covid-19 Pandemic in 2020. Once there is time for constructive reflection, I believe it is incumbent on policy makers to explore the legal structures of housing and property through a new lens, such as the connection between marriage and property, so as to build a better and more equitable system of property distribution. Marital status is certainly not be the only demographic lens through which the property system can be viewed; indeed personal wealth, age and education are also plausible factors which directly impact property rights. I believe that as this is a relatively underdeveloped area of contemporary socio-legal research, there is great value in exploring how the connection between our system of property law and modern social structures in Ireland have evolved from their inter-dependent origins to a present, more opaque relationship.

Argument and Structure

Rather than focusing too heavily on family law and the role of children in matters of property, I will instead discuss the 'marital family' as denoting the intimate and legal relationship between two adults

¹ David N. Schiff, "Socio-Legal Theory: Social Structure and Law." (1976) *The Modern Law Review* 39, no. 3: 287-310.

which produces a familial unit in society as per the constitutional definition, even in the absence of children. Marriage continues to occupy a dominant position in Constitution, and according to the Deirdre McGowan, 'has been deployed by the Irish government in managing the social domain since the foundation of the State.'² Family law in Ireland generally seeks to resolve disputes, often about the shared marital property, in instances of family breakdown, and indeed marriage breakdown.³ In this essay, I will consider the system of property law prior to family breakdown and thus, that which is outside the remit of family property law *per se*.

The thesis of this project is the following: the legal structure of property law,⁴ practical considerations of personal wealth and security,⁵ and policy measures,⁶ have created a system whereby marriage and homeownership are typically conjunctive positions in society which confers particular benefits in terms of property rights on this segment of the population. In comparison, those who avail of rental accommodation whether it be by necessity or desire (who more often than not are unmarried) do not benefit from the same amount of security of tenure due to the current configuration of the rental sector. I intend to tease out the legal treatment of different occupiers and to discover whether the lack of protection in the rental sector in combination with the normalisation of marriage and homeownership amounts to a discriminatory system of property in Ireland.⁷

Irish society values homeownership highly; 67.6% in the State are owner occupiers of their home,⁸ and the current Government is hoping to increase that to 70% by the end of the decade.⁹ It is widely understood that owning a home provides opportunity for social stability in terms of education, community and wealth,¹⁰ and that people are less likely to socially and financially invest in their local community when involved in the volatile and unfriendly rental market.¹¹ Therefore our value of

² Deirdre McGowan, *The Normalising Power of Marriage Law: An Irish Genealogy 1945 – 2010* (Maynooth University 2015) 26.

³ JG Miller, *Family Property and Financial Provision* (3rd edn, Tolley Publishing Company 1993).

⁴ These structures include legal protections for mortgagors upon default on their mortgage, family home protections and the comparative lack of protection for renters as will be discussed in Sections 4-6.

⁵ Including the rights and obligations delimited in a marital relationship and in asset investment which are suedo-contractual.

⁶ Policy measures such as various State interferences with the supply for and demand of housing stock e.g. first-time buyer supports.

⁷ OED definition of 'Discrimination' = Unjust or prejudicial treatment of a person or group, esp. on the grounds of race, gender, sexual orientation, etc.; frequently with against. Also (with in favour of): favourable treatment of a person or group, in order to compensate for disadvantage or lack of privilege.

⁸ Census Figures 2016, available at <CSO, <https://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/tr/>>

⁹ Hugh O'Connell, "Tánaiste Leo Varadkar sets new target of 40,000 homes to be built a year" *The Irish Independent*, (Dublin, 19 June 2021).

¹⁰ Daniel Aaronson, 'A Note on the Benefits of Homeownership' (2000) *Journal of Urban Economics* Vol 47(3) 360.

¹¹ D. DiPasquale and E. Glaeser, 'Incentives and social capital: Are homeowners better citizens?' (1999) *Journal of Urban Economics* 45, 354-384.

property is inextricably tied to notions of occupational security, opportunity for self-development, and of personal financial wealth. It is instinctive for most people to seek a form of tenure which provides them with the most rights over that land. As I will establish in this essay, in Ireland a freehold estate in land provides greater property rights and legal security of those rights than a leasehold estate does and is therefore a more attractive form of tenure for all persons seeking housing security in Ireland. When the rights associated with freehold estates are coupled with our value of marriage as the fundamental and basic unity of society, it is understandable why 87% of married couples without children, and 82.5% of married couples with children are owner-occupiers of their home.¹² What remains unanswered is whether this correlation between marriage and home ownership is merely a coincidence based on shared values, or whether it was an ideological legal and policy choice from the conception of the Irish State which has sense.

3 Theoretical Conceptions of Property Distribution

3.1 THE MEANING AND VALUE OF PROPERTY

Property ownership is potentially a collective ideal yet it is integral to European social order and has a very real presence in our everyday lives. Property is colloquially referred to as ‘something owned by another’ but in this context, I refer specifically to as the land and structures suitable to occupation which are built on that land; and property rights are henceforth understood to mean ‘the rights of a person to the land on which they are materially sustained’.¹³ Ownership is often understood as either a bundle of rights which can be separated and traded in component parts¹⁴ or as powerful rights of exclusion.¹⁵ Commercialised society values property greatly due to its high degree of utility as an instrument of maximising social wealth and welfare.¹⁶ Property, and indeed a home, have become tied to our identity and some academics argue that we construct our personhood through accruing rights to property.¹⁷ Similarly, marriage is valued as a life-fulfilling act which in concert with the acquisition of property, leads to the self-actualisation of a person.

¹² Census of Population 2016 - Profile 1 Housing in Ireland, ‘Tenure and Rent’ available at <www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/tr/> accessed July 2021.

¹³ A precise legal definition of land is situated in Section 3 of the Land and Conveyancing Law Reform Act 2009.

¹⁴ In the case of *Fitzpatrick v The Criminal Assets Bureau* [2000] 1 IR 217, Shanley J stated that ownership was ‘the entirety of the powers of use and disposal allowed by law.’

¹⁵ Margaret Davies, *Property: Meanings, Histories and Theories* (Routledge, 2007) 20.

¹⁶ Alexander, G., & Peñalver, E. *An Introduction to Property Theory* (Cambridge Introductions to Philosophy and Law 2012) 17.

¹⁷ *Ibid*, 103, see also Schnably (1993) 391.

3.2 THE ROLE OF THE LAW IN PROPERTY DISTRIBUTION SYSTEMS

The cementation and actualisation of claims to private property by the law is often seen as the key to structuring just and equitable social relations. The property rights system in Ireland operates on negative-protection basis with the law guarding against unconstitutional interference with property rights¹⁸ rather than guaranteeing every citizen of the State a positive right to own property. This conception of property rights, like all rights, does not provide absolute protection of property although it appears on the surface to be a stringent endorsement of private property. In fact, Article 43 of the Constitution suggests that there cannot be a solely private system for property as there is a connection to questions of social justice and the State's regulatory power.¹⁹ Furthermore, private rights to property must at all times be reconciled with the exigencies of the common good.²⁰ Thus, the Irish Constitution proffers a relatively strong entitlement to private property balanced neatly against greater social welfare considerations.

Rights to land are inherently exclusionary as they provide an entitlement to control a finite resource and prohibit others from occupying that space, however they can also be inclusive when considering matters of public ownership and welfare.²¹ As land cannot be created from thin air, the law acts as a system to resolve inevitable disputes that arise in the distributive process, and to create expectations as to how resources can be and will be used in the future.²² Jeremy Bentham has aptly stated that 'property and law are born together and die together'.²³ Legal rights to private ownership of external commodities have been justified by several theories. A rights-based theory mandates an underlying moral entitlement to property which is generated through labour, regardless of the social cost.²⁴ In contrast, the utilitarian theory of property is the idea that property institutions should be shaped so as to maximise the net utility of society i.e. maximisation of wealth and welfare. The 'Law and Economics' theory of property is largely a modernised version of utilitarianism whereby rights over property are deemed essentially valuable because of the wealth which is generated by their existence.²⁵

¹⁸ Article 40.3.2 ° and Article 43 of the 1937 Constitution.

¹⁹ Article 43.2.1°.

²⁰ Article 43.2.2°.

²¹ Hanoch Dagan, *Property: Values and Institutions* (Oxford University Press 2011) 54-55.

²² See Karl Polanyi, *The Great Transformation* (2nd edn, Beacon Press Boston 2001) [xxv]. Polanyi characterises a commodity as something that has been produced for sale on a market. By this definition land, labour, and money are "fictitious commodities" because they were not originally produced to be sold on a market. Peter Benson 'Philosophy of Property Law' in J Coleman & SJ. Shapiro, *The Oxford Handbook of Jurisprudence & Philosophy of Law* (OUP 2002) 752—757. The author notes that the law influences behaviour and decisions that people make for their future while also entrenching the status quo and in some cases, impeding social reform.

²³ Jeremy Bentham, *Principles of the Civil Code*, (Bowring edition 1843) 'Objects of the Civil Law' Chapter 8.

²⁴ See Robert Nozick *Anarchy, State and Utopia* (1974).

²⁵ Richard A. Posner, "The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication," (1980) 8 Hofstra Law Review 487

Instrumental concerns such as incentives and coordination costs are important features of discussions of private property in the utilitarian sphere. This legal-economic theory governing the distribution of land is commonly applied in many Western States, including in Ireland, through the use of an open market property structure.

A legal system based on protection of private property ownership can have a conservative impact, impede social reform, and is essentially an exclusionary system.²⁶ Private ownership of a finite resource has been philosophically justified by the intrinsic value of stable occupancy in how it provides opportunity for human flourishing and fulfilment, with different forms of property institutions being created to serve the different needs of population. Furthermore, the argument against communal or public ownership which may secure everyone a basic amount of property stems from a fear of the 'tragedy of the commons'.²⁷ This is the idea that a diminution of private entitlements could mean that there is little incentive for people to maintain and preserve the resources of the land over a long period of time, which could lead to abuse of power and maximisation. Margaret Davies has argued similarly that public ownership is potentially wasteful due to overuse and degradation.²⁸ Many fear that people would benefit from public goods without making an individual contribution. Conversely, private ownership creates a motivation to deal with land in an efficient, sustainable, and long-term manner as there is value in the land other than from the resources obtained from it. The risks from both styles of land system are mitigated in many countries by having both a system of state regulation of private ownership and a degree of public ownership of land.

3.3 VARIETY IN STATE INSTITUTIONS

I follow the reasoning of Hanoch Dagan in his book, *Property: Values and Institutions* in understanding property to be essentially pluralistic, 'an umbrella for a set of institutions bearing a family resemblance'.²⁹ As he argues, rather than searching endlessly for the core meaning of property, it is more realistic to see that property exists to serve a multitude of purposes including utility, autonomy, distributive justice, labour, personhood, and community. As Dagan states, '(o)nly by facilitating diverse forms of human interaction in the shape of different property institutions will property be able to

²⁶ John Locke philosophised in Chapter V of his work, *Second Treatise of Government* that self-ownership is justified as a reward for individual labour and because of economic efficiency. Hegel in his work *Philosophy of Right* took the view that people need property to be truly fulfilled as humans which has been since developed by Margaret Radin to the point which 'market inalienable' or non-commodifiable property and fungible or exchangeable property. See 'Property and Personhood' (1982) 34 SLR 957.

²⁷ Alexander, G., & Peñalver, E. *An Introduction to Property Theory* (Cambridge Introductions to Philosophy and Law 2012)17.

²⁸ Margaret Davies, (n 16) 15-21.

²⁹ Hanoch Dagan, (n 21) Prologue (I).

promote, as it does, the freedom-enhancing value of pluralism and the individuality-enhancing role of multiplicity, both crucial to the liberal idea of justice.³⁰ Similarly, marital theory purports that the continued presence of marriage in the public regulatory sphere is justified by the opportunity for human flourishing and development. An egalitarian liberal conception of marriage creates ‘marital communities’ which form the basis of much of modern society.³¹ Dagan conceives marriage as a plural subject which provides opportunity for intimacy, caring, commitment, and identity; a unit designed for the common management of resources through a long-term fusion of legal personality facilitate the fulfilment of these values.³² Additionally, marriage provides legal identity (or simply a label) for an interdependent human relationship. Those not subject to a marriage are excluded from its intimate details, and from the rights to property shared between the couple in that relationship.

The State is entitled to interfere with private ownership through legal regulation in the pursuit of the common good. However too much interference could undermine the efficiency of the utilitarian market system and destroy the true meaning of private property rights. It is a delicate balance to strike, and one that has been explored in great detail by Professor Rachael Walsh in her book *Property Rights and Social Justice*.³³ The State has deregulated the system of property distribution to cater to the demands of private property ideals through use of the open-market property system and an abandoning of the costly and inefficient property-welfare State of the 1930-80’s.³⁴ In principle, ‘the perfect market presupposes numerous homogenous individuals trading in numerous homogenous products, under conditions of complete information.’³⁵ Yet as Dagan has supposed, utilitarianism and human flourishing are conceptions of property which can construct separate but intertwined institutions under the umbrella of property.³⁶ Therefore, it is plausible that the Irish property market will only be successful and efficient if there is a diverse range of tenure offered and supplemented by State action. Diversity and variety may also be factors which enable utility maximisation while also producing an efficient system which makes efficient use of the finite resource and vindicated values of human personality; this is an area of State policy which warrants interference. It is ironic that deregulation by the State can both ensure equal opportunity of access and simultaneously place unfair constraints on access for those who are marginalised by other socio-economic or demographic factors.

³⁰ *Ibid* Prologue (II).

³¹ *Ibid*, 14.

³² *Ibid*.

³³ *Property Rights and Social Justice: Progressive Property in Action* (Cambridge University Press 2021).

³⁴ See Michelle Norris, *Property, Family and the Irish Welfare State* (Palgrave Macmillan 2016).

³⁵ Manya Mainza Mooya, ‘Why property market forecasts fail’ (2021) *Property Management* Vol. 39 No. 2, 156.

³⁶ Hanoch Dagan instead argues for a pluralistic and ‘realistic’ understanding of property, in that property is ‘an umbrella for a set of institutions bearing a family resemblance.’ Property can serve all purposes of utility, autonomy, distributive justice, labour, personhood and community. And the meaning of property ‘varies according to the type of resource ... and ... social setting’.

Furthermore, a failure to appreciate humanity's tendency to be adverse to risk throws rational economic choice theory, on which the perfect market is predisposed, into disarray; the loss of stable occupancy is such a devastation to a person's sense of social stability that their actions may not match the rational choice which market theory predicts.³⁷ Rationally, it makes sense that if a person cannot afford to rent in a particular area, then they would be forced to move somewhere else which provides cheaper accommodation. Yet a multitude of factors may instead lead a person to take on an extra job to meet the rental payments thus, the priced-out person does not reduce the demand for rental accommodation and the market prices remain high.

Conclusion Part I

Henceforth, I intend to explore the system of property distribution in Ireland in terms of the legal framework and the social implications of this framework. I will not argue for a positive socio-economic right to housing to be enshrined in the Constitution, rather to a lesser extent, I put forward that the State should prescribe policies and legislation which suit the needs of the changing demographic and ensure that all are treated as equal before the law, regardless of their social status. A claim to a positive socio-economic right has not been well received by the Irish judiciary as it would involve the courts requiring the Government to act to realise this right with a great resource cost, a decision which would undermine the Separation of Powers.³⁸ Conversely, a negative formation of the 'right to housing' prohibits the State from any action that marginalises the needs of a group in society. This negative right is less cumbersome but not used frequently to combat marginalisation.³⁹ Given the relationship between stable occupancy and human flourishing, no person should be prevented from the reasonable opportunity to acquire proprietary or personal rights suited to their particular needs. However, to reduce inequality in the property system, the Legislature must act to balance the respective rights and obligations of the renting population against that of the home-owning population. Furthermore, I pose the question of whether the various forms of property available act as default structures for interpersonal interaction and increasingly normalise the legal institution of marriage in Irish society.

³⁷ Daniel Kahneman, *Thinking Fast and Slow* (Penguin Books 2012).

³⁸ For example, see the judgement of Keane CJ in *T.D. v. Minister for Education* [2001] IESC 101.

³⁹ The 2015 Marriage Equality Referendum which allowed for same-sex marriage under the Constitution was a positive right enshrined in the Constitution.

4 THE MEANING OF THE MARITAL FAMILY IN THE IRISH CONSTITUTION

4.1 THE DEFINITIONAL FRAMEWORK

Article 41 of the 1937 Irish Constitution outlines the Irish State's commitment to the Family as a 'natural primary and fundamental unit group of society',⁴⁰ that is, the family is defined as a necessary basis of social order, without which the State could not operate. In Article 41.3, we see that the institution of marriage is believed to be the foundation of the family in Irish society; the Article further asserts that the State will endeavour to protect the institution of marriage 'against attack'. It is important to note that the Constitution protects the family unit based on marriage rather than the rights of the individual members in the family unit.⁴¹ In the case of *State (Nicolaou) v An Bord Uachtála*, the Supreme Court interpreted the reference to 'family' in Article 41 to mean a marital family.⁴² As Oran Doyle states, 'this (distinction) provides constitutional authorisation for legislative discrimination against unmarried families, in favour of married families' and 'implicitly deems non-marital families to be less worthy of recognition than marital families.'⁴³ The traditional ideological choice of providing greater protection to a marital family than to a non-marital family remains relevant to courts of constitutional law to this day.⁴⁴

Interestingly, Deirdre McGowan argues that 'marriage law (rather than family law *per se*) acts, in conjunction with other techniques of government, to conduct conformity in social (and relationship) behaviour.'⁴⁵ The regulation of marriage in Ireland was for a long time at the mercy of the Catholic Church and produced a limited understanding of what marriage means – such that marriage is a religious and social union between a man and a woman – which remained the status quo until relatively recently.⁴⁶ The State began to involve itself in the regulation of marriage in the 1960's and 70's⁴⁷ as a mechanism for social reform but maintained this limited definition of marriage,⁴⁸ justified by the need to provide familial and social stability for the purpose of 'achieving balanced and stable economic

⁴⁰ Article 41.1. 1°.

⁴¹ Alan Shatter, *Family Law* (4th edn, Butterworths Tolley 1997) pp 13.

⁴² [1966] IR 567.

⁴³ Oran Doyle and Tom Hickey, *Constitutional Law: Text, Cases and Materials* (2nd edn, Clarus Press 2019) [18-25]

⁴⁴ The Supreme Court reiterated in the case of *M (Immigration—Rights of Unborn) v Minister for Justice and Equality* [2018] IESC 14 that "family" for the purpose of Art.41 is restricted to marital families, regardless of children, and does not include non-marital unions or unmarried lone parents.

⁴⁵ Deirdre McGowan, (n 2) 4.

⁴⁶ The 2015 Marriage Equality Referendum inserted the 34th Amendment to the Constitution enabling the marriage between two persons of the same sex.

⁴⁷ Family Law (Maintenance of Spouses and Children) Act 1976, Family Home Protection Act 1976.

⁴⁸ See *O'Brien v Stoutt* [1984] IR 316.

growth.⁴⁹ Up until this point, the State attempted to protect the institution of marriage through non-interference so as to encourage lifelong marriage which could not be “escaped from” save in certain, rare circumstances.⁵⁰ Yet as our society has grown increasingly secular and as our understanding of the family has changed and developed, several significant amendments have been made to this area of the Constitution and to the regulation of marital relations through legislative action, which have impacted the way we view the rights of marital families, and indeed the connection of these constitutional values to our considerations of property rights.

4.2 RECENT DEVELOPMENTS IN THE INSTITUTION OF MARRIAGE

The first significant change to Irish law relevant to the area of property rights, was the Judicial Separation and Family Law Reform Act 1989 and the Family Law (Divorce) Act 1996 following the referendum of 1995. The constitutional change removed the prohibition on divorce contained in Article 41.3.2 and allowed for the dissolution of a marriage.⁵¹ Prior to this, death was the only way a marriage could be legally ended. The divorce rate in Ireland as of 2017 continues to be one of the lowest in Europe; a Eurostat survey noted that the rate in the Republic of Ireland is 0.7% a year for every 1,000 people, compared to the noticeably higher 1.9% for the UK and 3.2% for the US.⁵² This low figure has been attributed to the stringent protection of the institution of marriage in Ireland which prior to 2019 required a couple to be separated for four out of the five previous years before applying to divorce. The 38th amendment in 2019 reduced the required period of separation to two of the previous three years⁵³ making it much easier and faster for a separated couple to secure individual financial and social freedom.⁵⁴ The legal provision for a no-fault divorce mechanism is very important for distribution of property rights upon separation as it preserves the autonomy of the individuals in the couple and allows them to make decisions about their property in a similar fashion to that of a contractual partnership making an investment in a ‘real property’ asset. This idea will be discussed in more detail in section 5.4. In essence, these two amendments highlight our developing understanding of marriage; the State and general society acknowledge that marriage is not necessarily a lifelong arrangement and furthermore,

⁴⁹ McGowan, (n 2) 25.

⁵⁰ For example, an annulment could be arranged in certain circumstances.

⁵¹ Section 5 of the 1996 Act.

⁵² Eurostat ‘Marriage and Divorce Statistics’ (updated 7 July 2021) available at <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Marriage_and_divorce_statistics>.

⁵³ Lisa Keenan ‘The divorce referendum 2019’, (2020) *Irish Political Studies*, 35(1) 80-89.

⁵⁴ The number of divorce applications has risen by nearly a third in 2020 due to the changes under the 2019 Amendment Act. Colm Keena, Colin Gleeson ‘Divorce applications rise by nearly a third in wake of new legislation’ *The Irish Times* (29 June 2021) available at <<https://www.irishtimes.com/news/ireland/irish-news/divorce-applications-rise-by-nearly-a-third-in-wake-of-new-legislation-1.4633068>> accessed 30/07/21.

that in the future, marriage might not necessarily be the fundamental basis of the family, or of social order.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 authorized same-sex couples to register as ‘civil partners’; a legal status not on par with the Constitutional definition of marriage yet a recognition of a long-term committed relationship similar (but not equal) to that of a marriage. The Act also broadened the scope of the rights of cohabitants (as defined in 172.(1)). Cohabitants were also not regarded as being in a committed legal relationship equal to that of a married co-habiting couple; nevertheless, the Act was significant as it acknowledged the need to give legal status and authority to those who shared property rights, regardless of their marital status. Deirdre McGowan argues that marriage law reform in areas such as this ‘was constructed as a way to redress the exclusion and vulnerability of those who formed relationships outside the parameters of traditional marriage.’⁵⁵ Indeed, one of the most fundamental areas of legislative exclusion prior to the 2010 Act was that of property; this legislation ensured that those who accrued property rights with a cohabitant were able to access protection and security of those interests to a much greater extent.

The third significant change to our understanding of marital relations in Ireland was the 2015 Marriage Equality Referendum which inserted the 34th Amendment into the Irish Constitution. The amendment under Art 41.4.1 states that ‘Marriage may be contracted in accordance with law by two persons without distinction as to their sex’. This amendment hugely expanded the legal definition of marriage and ensured that those who were once marginalised by the law and forced to live their lives outside the marital paradigm had equal opportunity to live and be recognised as a ‘fundamental unit of society’. The 34th amendment also allowed those in same-sex couples to access the same protections of property rights afforded to those in marital families.⁵⁶ Interestingly, the marriage drop-off rate was not slowed by the 2015 referendum⁵⁷ – the marriage rate between opposite-sex couples decreased from 4.7 per 1,000 people in 2014 to 4.0 in 2019 but when including same-sex couples this rate was only increased by 0.1%.⁵⁸ It is plausible that the referendum, while guaranteeing equality of opportunity regardless of sexual orientation, may not have ‘saved’ the institution of marriage from its possible future obsolescence. If the rate of marriages in Ireland continues to decrease and divorce rates continues to increase, it is clear that symbiotic values of homeownership and marriage may not be easily reconciled by majoritarianism.

⁵⁵ McGowan, (n 2) 21.

⁵⁶ For example, the Family Home Protection Act 1976.

⁵⁷ CSO statistical release, 28 April 2020. Table 1 Summary Data available at <<https://www.cso.ie/en/releasesandpublications/er/mar/marriages2019/>>.

⁵⁸ *ibid*

Conclusion Part II

Fergus Ryan has argued that regardless of these changes and amendments to the Constitution, to the legislative framework of marriage law and to our social values, the traditionalist notion of '(m)arriage, therefore, largely retains its central and privileged position, despite a significant growth in alternative models of family life.'⁵⁹ Although, he further notes that '(c)ohabitation outside marriage has grown in both popularity and duration; cohabiting couples (around 49 per cent of whom had children) made up around 12 per cent of all family units in 2016 (152,302 cohabiting couples were counted).'⁶⁰ On this basis, there is an assumption that the relationship of marriage identified in the Constitution under Article 41 as being worthy of significant protection 'from attack', remains in its place of legal primacy even as the meaning of marriage has expanded to encapsulate more people. Those left outside the remit of the modern definition could therefore be subject to increased marginalisation in law because choosing not to marry is now a personal choice rather than a problem of accessibility.⁶¹ Furthermore, a single coherent conception of the institution of family - which includes a marriage between two adults - could potentially be an inappropriate model for the laws of nonmarital relationships in terms of property rights if the concept of 'true choice' in autonomous relationships is to be respected.⁶²

5 THE IRISH PROPERTY WELFARE STATE

Without concentrating too heavily on the numerous policies delineating the public property sector, in this section I hope to provide historical context for the thesis of this research essay and offer a nuanced perspective on the crossover between the public and private regulation of property while continuing to intertwine the role of the marital family in the regulation of property distribution. In fact, some legal theorists argue that public and private property law realms are and should continue to be intimately intertwined so as to form an intermediate property institution.⁶³ The Irish social welfare system is an extremely broad area of policy which does indeed incorporate elements of both private and public ownership of property and so it is highly relevant to the current discussion. It is valuable to this project to contrast the property welfare sector against the private property market and highlight the difference in approach, if any, with regards to the influence of the marital family on property rights.

⁵⁹ Fergus Ryan, 'Unfinished Business? Equality and Family Diversity in the Wake of the Irish Marriage Referendum' (2018) 21(3) *Irish Journal of Family Law*, Issue 3, 59-69.

⁶⁰ *ibid*

⁶¹ Courtney G. Joslin, 'Autonomy in the Family' (2019) 66 *UCLA L. Rev.* 912

⁶² June Carbone & Naomi Cahn, 'Nonmarriage' (2016) *Maryland Law Review* 55. Vol 76.

⁶³ Dagan (n 22) 84.

5.1 A HISTORICAL OVERVIEW

Current Irish housing policy is dualist in nature⁶⁴, with both cost rental and profit rental sectors. This policy choice has complex roots, which reflect ‘the agrarian origins of much of Irish social policy’.⁶⁵ The learned author Michelle Norris has argued that the familyist social ideology and system of property welfare in Ireland were intrinsically linked from the Land Reform Acts of 1870 onwards until the 1980’s, including during the formation of the Irish Free State in 1922.⁶⁶ The economic vitality of the three-generational family was encouraged in the 1840’s after the Great Famine through provision of subsidies to families to decrease their debt and enable them to purchase their farmstead while also receiving strong support from the Catholic Church.⁶⁷ After independence, the author describes how the Irish State continued to support families as envisaged by the 1937 Constitution through an expansion of property redistribution subsidies which reinforced the authority of the family by giving great discretion to parents as to how inheritance of the farm would play out.⁶⁸ It is clear that to some extent, the values of the familyist model of that time have been passed on through generations of family farmers thereafter for practical as well as ideological reasons; those who inherit a family farm from their forebearers are not only provided with rights over the land on which they live, but also an occupation in tending the land and extracting valuable resources from it.

Between 1948 and 1968, the Irish State firmly established itself as one based on property-welfare, largely through great interventions into land redistribution.⁶⁹ For example, the 1936 Labourers Act had obligated local authorities in rural areas to sell their houses to tenants at a discounted price of up to 75% of pre-purchase rents.⁷⁰ Tenant purchase schemes extended to all local authorities under the 1966 Housing Act and so urban areas began to run similar schemes with great success.⁷¹ As Drudy and Punch argue, these ‘(g)enerous subsidies to those who wished to eventually privately purchase their homes contributed to the comparatively high rates of home ownership in Ireland’⁷² which reached 70.8% in

⁶⁴ A. Davidson states that ‘Housing market ‘duality’ means that social housing is separated from the housing market in general, protected and regulated to keep rents low, and targeted through means-testing to the most needy groups. The consequences are that it becomes stigmatised (the main argument for its abandonment in Sweden in 1948) and vulnerable to attacks by Conservative governments.’ (1999) ‘Alternative models of social housing: tenure patterns and cost renting in New Zealand and Sweden Housing Studies, 14(4), 453–472, p. 456.

⁶⁵ Eoin O’Sullivan, ‘Welfare Regimes, Housing and Homelessness in the Republic of Ireland’ (2004) EU Journal of Housing Policy pp 323.

⁶⁶ Norris, (n 35)

⁶⁷ Norris, Gibbon and Curtain (1978) ‘The Family in Context: The Stem Family in Ireland’ 20(3) p429

⁶⁸ Norris, (n 35) 7.

⁶⁹ *ibid* 115.

⁷⁰ *ibid* 134.

⁷¹ *ibid* 35.

⁷² PJ Drudy and Michael Punch, ‘Housing Models and Inequality: Perspectives on Recent Irish Experience’ (2002) Housing Studies, Vol. 17, No. 4, 657–672

1971.⁷³ The collapse of the property welfare State in the 1980's changed the policy focus enormously; migration schemes ceased but redistribution did not, the majority of homeowner subsidies were abolished but the government continued to promote the goal of private property acquisition by, for example, providing a grant of £5,000 to local authority tenants who were willing to surrender their home and buy a home from the private market and the revision of the tenant purchase schemes.⁷⁴ According to the CSO, homeowner levels reached 80% of households in 1991.⁷⁵ This increase coincided with the decline in popularity of extended families living on small farms to the emergence of nuclear family structures dominating in urban areas⁷⁶ which denotes the economic development of the country from one of agriculture to that of industry during that time.

Norris suggested that the tradition of using property to promote economic and employment growth survives in policy structures today, even after the Keynesianism policy movement of the 1980's when the Government began to defer predominantly to the private sector market as a mechanism to redistribute land.⁷⁷ In the 1990's and early 2000's, there was a policy adjustment to deregulation and commercialisation of the housing market. Although the majority of land redistribution and housing provision became a private market activity, the Government strongly supported commercial bank lending and encouraged the construction of private, large-scale housing developments as both an employment stimulus and as a way to promote property acquisition.⁷⁸ However, the government was involved in supporting the private market through deregulation of the banks, provision of stimulus in the construction industry and by encouraging a permissive attitude to land planning.⁷⁹ The evidence today of the continuing influence of the 'agrarian origins' of Irish housing policy is in the sizable number of low-income homebuying subsidies from the Government and relatively substantial quantity of small-scale farms⁸⁰ which are rendered cost-effective because of public subsidies.

5.2 CURRENT PROPERTY WELFARE SYSTEMS

As of 2021, the Irish welfare system provides support to those who cannot afford pay rent or purchase a property through a number of different schemes at a local and national level: local authority supports

⁷³ Norris (n 35) 151.

⁷⁴ *ibid* 181.

⁷⁵ CSO Figure 3.2 'Census of Population 2016 - Profile 1 Housing in Ireland', available at <<https://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/tr/>> accessed 30/07/21.

⁷⁶ Norris (n 35) 197.

⁷⁷ *ibid* 8.

⁷⁸ Norris (n 35) 203-204.

⁷⁹ *ibid* 9.

⁸⁰ The 2016 Census counted 137,100 family farms with an average size of 32.4 hectares. Only 400 non-family run farms were recorded. See the Farm Structure Survey 2016 available at <<https://www.cso.ie/en/releasesandpublications/ep/p-fss/farmstructuresurvey2016/>> accessed 30/07/21.

include the Housing Assistance Scheme, the Rental Accommodation Scheme and Social Housing Current Expenditure Programme which are generally assessed based on the income of the applicant and the number of dependents in their household.⁸¹ Single parents within the income threshold are prioritised on the social housing waiting list due to the need to provide a stable home for the children, yet it is a potentially unsustainable practice to offer support to non-marital families such as these solely through the public sphere, particularly given the stigma associated with social housing; unfortunately, the most recent report on the implementation of the European Social Charter found that social housing conditions were in violation of Article 16 because of the poor quality and unsafe accommodation⁸² but this yet to impact change in the social housing system. Alternatively, increasing State regulation of the private rental market may reduce pressure on social housing and improve the ecosystem of the private sphere and develop a system similar to that of Vienna in Austria.⁸³

The Department of Social Protection also offers the Rent Supplement Scheme to those living in private rental accommodation who cannot afford the cost of the rent using their own resources.⁸⁴ The scheme differentiates between individual applicants and those applying as a couple; a minimum of €30 a week is offered to qualifying individuals and €40 a week to a couple. Fahey has noted how the public provision of rental housing owes its origins to land agitation in the late nineteenth century, which resulted in the public provision of labourers' cottages, which was extended to urban areas in the twentieth century.⁸⁵ Those who have availed of the Rent Supplement for a long time and who qualify for the social housing waiting list are as of late being encouraged to transfer to the Housing Assistance Payment, the streamlined local authority system for housing support.⁸⁶

Family and marital ideologies are certainly not the only influences on the property welfare structure of modern times. As Padraic Kenna noted in a recent interview,⁸⁷ the large developments which built mostly family homes on the edge of towns and cities, chose to build the type of housing most suitable for 'married' families with children because of the financial incentive to do so; standard family homes

⁸¹ Department of Housing, Local Government and Heritage publication 'Social housing support provided by local authorities' (2 December 2020), available at <www.gov.ie/en/publication/4e264-social-housing-support-provided-by-local-authorities/> accessed 30/07/21.

⁸² Collective Complaint n° 110/2014 - International Federation for Human Rights (FIDH) v. Ireland [23.10.2017]. Decision available at <<http://hudoc.esc.coe.int/eng?i=cc-110-2014-dmerits-en>> accessed 2/08/21.

⁸³ See Wolfgang Forster 'Social Housing Policies in Vienna, Austria: A Contribution to Social Cohesion' (10 May 2013) *The New Tenement: Tradition and Modernity*.

⁸⁴ Department of Social Protection publication 'Rent Supplement' (29 July 2019) available at <www.gov.ie/en/service/fb3b13-rent-supplement/> accessed 30/07/21.

⁸⁵ T. Fahey, 'The Family Economy and the Development of Welfare Regimes: A Case Study' (2002) *EU Sociolegal review* 18(1) 51-64, 329.

⁸⁶ For more information see <hap.ie/>.

⁸⁷ Interview date Wed 23rd June 2021. Contact for transcription of the interview.

are simply cheaper to build than higher-density apartment blocks closer to economic centres.⁸⁸ According to the CSO in 2016, the majority (41.2%) of occupied permanent housing units in Ireland are detached houses. Thus, there is a coincidental correlation between the amount of public spending on housing and the housing produced which is best suited to families. Furthermore, the majority of families have parents who are traditionally married due to the enduring (although declining) popularity of the institution of marriage.

Conclusion Part III

Welfare systems which promote homeownership undoubtedly promote long-term nuclear family structures as this form of living is conducive to stable occupancy requiring a long-term monetary commitment. Although the Irish State in the 2020's does not in principle support homeownership as the singular method of acquiring rights to property, in practice, the lack of stability in the rental sector results in denigration of the rights to property of those who are not in long term, stable marital family structures. Drudy and Punch note that other academics have identified '...serious difficulties in countries where market provision is dominant, suggesting that it exacerbates rather than reduces inequality.... Forrest & Murie (1995) argue that there is a clear link between social class and housing wealth in Britain.'⁸⁹ Given that the land and welfare systems in Ireland and Britain are not altogether dissimilar, it can be argued that this inequality is also evident in the Irish property market as of today. Many of those not in nuclear family or marital structures (and a minority of marital families) appear to miss out on stable occupancy through long term tenancies or homeownership due to the unequal private market structure and inadequate social welfare subsidies.⁹⁰

6 THE MARITAL FAMILY AND THE HOUSING MARKET

In this section, I intend to discuss the incidence of homeownership in Ireland and its relationship to the housing market with a view to discovering possible legislative agendas which benefit the marital family over a non-marital family.

⁸⁸ Society of Chartered Surveyors, Ireland 'The Real Costs of New Apartment Delivery' (January 2021) available at <mk0societyofchag3d3v.kinstacdn.com/wp-content/uploads/2021/01/SCSI_RealCostofNewApartmentDelivery_final.pdf> accessed 6/07/21.

⁸⁹ PJ Drudy and Michael Punch, 'Housing Models and Inequality: Perspectives on Recent Irish Experience' (2002) *Housing Studies*, Vol. 17, No. 4, 657.

⁹⁰ Fiona Reddon, 'Is owning a home a pipe-dream for the young?' *The Irish Times* (13 April 2021).

6.1 THE LEGAL CONCEPTION OF PROPERTY OWNERSHIP

Homeownership is recognised as a right to “real property” rather than a lease which is a relational right and therefore personal.⁹¹ Ownership of land is recognised as a ‘freehold estate’ in land by the law. Section 11(2) of the Land and Conveyancing Law Reform Act (“LCLRA”) of 2009 defines a freehold estate as a fee simple in possession and includes a determinable fee, a fee simple subject to a right of entry or re-entry, a fee simple subject only to a) a power of revocation, b) an annuity or other payment of capital or income for the advancement, maintenance or other benefit of any person, or c) a right of residence which is not an exclusive right over the whole land. A fee simple in possession is the closest form of title over land to outright ownership and owes its origins to the feudal system of land ownership in Ireland and England during the Middle Ages.⁹² The LCLRA 2009 alongside the 2013 and 2019 Amendments are the primary legislative regimes overseeing the transfer, conveyance and ownership rights of land in Ireland as of 2021. A right to own a home is not enshrined in Irish law, although in reality, a right to shelter is generally secured through the various welfare and charitable schemes which provide emergency accommodation. Political and judicial interpretations of Article 40.3.2° of the Irish Constitution indicate that a constitutional right to a home is not forthcoming⁹³ as it would place a heavy financial and administrative burden on the State to provide housing to all; a responsibility which is in opposition to the ‘enabling market theory’⁹⁴ that has been in action in the Irish State since the 1980’s.

Property law serves the market by creating rules for the enforceability and exchange of property rights while also legitimising the concept of ownership and rights of alienability.⁹⁵ The lawful regulation of the housing market entails an inherent overlap of the rules of contract and land law as real property is treated as a commodity between two private entities; however, rights of exclusion and ownership obtained through a contract for the sale of land are enforceable against third parties and the State. This greater degree of control elevates (or separates) land law above that of contract law.⁹⁶ Furthermore, ownership of land is not recognised by private agreements, as most titles to and interests in land must be recorded in the Property Registration Authority to facilitate free alienation of land and encourage

⁹¹ Fiona de Londras, *Principles of Irish Land Law* (2nd edn, Clarus Press 2011) [1-04].

⁹² *ibid* [4-04].

⁹³ Cónal Thomas, ‘A constitutional right to housing has expressive value but would it force government to act?’ *The Journal* (June 8th 2021) available at <www.thejournal.ie/it-has-huge-expressive-value-but-would-a-right-to-housing-in-our-constitution-force-governments-to-act-5453992-Jun2021/> accessed 20/07/21.

⁹⁴ Ronan C. Lyons, “Housing Market: Supply, Pricing and Servicing Issues” in John O’Hagan and Francis O’Toole (eds), *The Economy of Ireland – Policy & Performance* (13th edn, Palgrave MacMillan 2017).

⁹⁵ Padraic Kenna ‘Perspectives on the Irish Housing System’ in *Housing Law, Rights and Policy* (Clarus Press 2011) [3-03].

⁹⁶ K Gray, ‘Property in Thin Air’ (1991) 50/2 CLJ 252, 294. Eveline Ramaekers, ‘What is Property Law?’ (2017) 37 (3) *Oxford Journal of Legal Studies*, 590 and JHM van Erp, ‘Contract and Property Law: Distinct, but not Separate’ (2013) 9(4) *European Review of Contract Law*, 307.

conveyance of land with full information.⁹⁷ Registration is one aspect of the property system which exists to 'enable' the efficient functioning of the market.⁹⁸ As I intend to demonstrate thoroughly, the Irish property system generates powerful rights of exclusion and greater security over the proprietary asset that is a home and which are unrivalled by the personal rights to property granted under a lease, license or contract.

6.2 LEGAL PROTECTIONS OF PROPERTY OWNERSHIP

Protection of property ownership in Irish law can be classified by three distinct categories. Firstly, there are two constitutional protections of private property rights under Article 40.3.2 and Article 43 of the Constitution which must be reconciled with 'principles of social justice'⁹⁹ and 'exigencies of the common good'.¹⁰⁰ The State has typically sought to prioritise and defend ownership rights of property over those rights under a lease or licence thus ownership has a special Status in Irish society and law.¹⁰¹ Secondly, consumer protections for unfair mortgage terms are extensive¹⁰² and generally, courts must aim to avoid repossession of a property where alternative repayment structures are possible.¹⁰³ Thirdly, the system of co-ownership agreements under the LCLRA 2009 and the Family Home Protection Act 1976 safeguards spousal investments in a home and provide familial security through the system of survivorship.¹⁰⁴ If a married couple are registered as Joint Tenants of their property, they are automatically whereby one partner will inherit 100% of the title upon the other's death without owning inheritance tax¹⁰⁵; if the partner dies intestate, the other spouse (with no children) is entitled to a 'legal right share' and automatically receives a half share of the deceased's estate.¹⁰⁶ This protection was

⁹⁷ De Londras, [7-01].

⁹⁸ *ibid.*

⁹⁹ Article 43.2.1.

¹⁰⁰ Article 43.2.2.

¹⁰¹ For example, the argument that 'forcing a reduction in rents, as this Bill attempts to do, would infringe on property rights which would be unconstitutional', Deputy Pat Casey speaking at Dáil Éireann debate on Thursday, 18 May 2017, Vol. 951 No. 2, available <www.oireachtas.ie/en/debates/debate/dail/2017-05-18/88/>

¹⁰² European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 implementing Council Directive 1993/13/EEC of 5 April 1993.

¹⁰³ Such as a Personal Insolvency arrangement. The LCLRA Amendment Act 2019 inserted Section 2A which provides courts with greater discretion to grant, refuse or stay orders for repossession after a default on a mortgage. Dependents are a factor of consideration under Section 2A(3)(b).

¹⁰⁴ Kathryn O'Sullivan, 'Til death do us part': surviving spouses, civil partners and provision on intestacy in Ireland' (2016) *Journal of Social Welfare and Family Law*, Vol 38, No. 2, 118–139.

¹⁰⁵ Section 4(c) of the Succession Act 1965. Finnegan J in *Mahon v Lawlor* [2010] IESC 58 noted that 'The distinguishing feature of a joint tenancy is the right of survivorship, *jus accrescendi*. The last surviving joint tenant will hold the entire land. The lands accrue to the surviving joint tenant by right of survivorship and not by descent. The right of survivorship is an incident of the title created by the original grant to the joint tenants and it is by virtue of the original grant that the survivor becomes entitled to the entire. The estate of a joint tenant ceases on death.'

¹⁰⁶ Section 111 of the Succession Act 1965.

extended to registered cohabitants and civil partners by the 2010 Act.¹⁰⁷ The cumulative effect of these regimes is such that those wishing to own property, provided they have the financial capacity to do so, will generally be encouraged, respected, and protected by the State in their endeavours to gain and maintain ownership rights over land even through familial changes.¹⁰⁸

Given the extensive protections of ownership in the Irish State, it is clear why the majority of people are attracted to the prospect of homeownership over long-term rental accommodation. What I concern myself in this investigation is whether access to the private ownership market of property is limited by social factors such as marriage, if those who are excluded from this realm are disadvantaged and furthermore, if this exclusion amounts to a subtle system of discrimination in Irish property law. Indeed it must be noted that personal wealth is the dominant means by which private ownership is secured; however I intend to show that marriage and wealth are more interdependent than one might originally suppose.

6.3 HOUSING MARKET THEORY

The process of redistributing land and housing is now primarily at the mercy of the private housing market. Ireland, like many EU countries, has adopted an ‘enabling market approach’ – a neoclassical microeconomic development of classic economic theories such as Adam Smith’s from the 1700’s.¹⁰⁹ This approach creates a system of property distribution based on a balance of supply and demand of the commodity and assumes that ‘the collective actions of producers in the market will ensure that useful items, including housing, are created.’¹¹⁰ Thus, housing and land is defined as a commodity, ready for exploitation by commercial and non-commercial actors. Those with the most money at their disposal succeed in the marketplace as they can place the highest bid for the commodity which is for sale. It is therefore important for the purposes of this study to inquire as to whether marital families have a financial advantage over that of a non-marital family or individual, with respect to the type of supply in the housing market as it currently functions. If marital families have a clear financial advantage over others attempting to access the private market, it can be plausibly inferred that this social unit has greater opportunity to pursue private ownership and following this, greater dominance in the demographic of Irish homeowners.

¹⁰⁷ By Section 73.

¹⁰⁸ Some notable exceptions to rights of alienability and exclusion are compulsory acquisition schemes, the requirement to secure planning permission and adverse possession.

¹⁰⁹ Padraic Kenna (n 96) 58, footnote 1.

¹¹⁰ *ibid* [3-01].

The housing market is not entirely unregulated and 'free' as where it is necessary, the Irish State supplements the market with rules and policies to ensure that the equilibrium between supply and demand is restored. Their supplementary regulations can therefore direct the underlying ideology of the system or create a list of priorities even though the market is in theory 'free'. Economic based principles justify this intervention; for example, matters of efficiency, externalities, equity, dealing with monopolies and addressing imperfect information among consumers may result in State intervention.¹¹¹ It is exceedingly clear that the housing market in Ireland is in disequilibrium; in particular, Dublin scored a 4.7 on the Demographia International Housing Affordability Survey which designated it to the category of being a 'seriously unaffordable' place to live.¹¹² Many economists and politicians believe that a lack of housing *supply* is the true source of the housing crisis in Ireland¹¹³ as the more of the commodity in the market, the lower its value will be. Given that land is a finite resource and that in urban areas where there is higher population density, a deeper understanding of the social factors at play and the future changes in Ireland's demographic need to be taken into consideration so that sustainable housing policy developments can be achieved.

Housing policy theorists have argued that 'income is a key measure of underlying demand for housing'¹¹⁴ but it is certainly not the only factor at play. The marital status of the population is a number of social demographic features of the population which influence the level of demand for housing. These two factors in combination with the quantity, variety and quality of the supply influence the monetary value of housing in the market.¹¹⁵ There is also an underlying assumption in Irish housing economics that the richest 70% will be wealthy enough to get a mortgage to purchase a freehold estate in land and that the 30% remainder of the population will be split between renting and social housing.¹¹⁶ This assumption does not necessarily contemplate a society which rejects homeownership as a normative ideal and instead prefers the rental market. This is possibly due to the current high levels of demand for homeownership, which the Government seem determined to increase to 70% by building in excess of 40,000 homes a year until 2030 to meet demand.¹¹⁷ Yet the question of demand is not so straightforward as Irish properties are generally far larger than European equivalents¹¹⁸ and have the

¹¹¹ *ibid* [3-248].

¹¹² In comparison, London scored 8.2 and Hong Kong scored 20.8 categorising them as 'severely unaffordable' places to live. Available at <<http://www.demographia.com/db-dhi-index.htm>> accessed 15/07/21.

¹¹³ Minister Simon Coveney referenced 'supply' 18 times in the Dáil Éireann debate about the Residential Tenancies (Housing Emergency Measures in the Public Interest) (Amendment) Private Members Bill 2016: Second Stage (Thursday, 18 May 2017) Vol. 951 No. 2.

¹¹⁴ Ronan C. Lyons, (n 95).

¹¹⁵ *ibid*.

¹¹⁶ *ibid* 9.

¹¹⁷ Hugh O'Connell, (n 10).

¹¹⁸ 'Average number of rooms per person by tenure status and dwelling type from 2003 onwards - EU-SILC survey' As of 2019, there are an average of 2.1 rooms per person in Ireland, compared to an average of 1.6

potential to house much larger households if they were adapted correctly. One could argue that this demand is so high because of the lack of an appropriate alternative. It is also possible to inquire in a philosophical manner at a later date as to the normalising power of homeownership in Irish society and its connection to marital relationships.

Supplementary State Action

Schemes which encourage first-time buyers such as the Rebuilding Ireland Loan Scheme are popular in Government as it becomes more and more difficult for younger generations to get a foot on the property ladder. To qualify, the income of a single applicant must be below €50,000 which increases to €75,000 for joint applicants. The higher threshold for a joint application makes this mortgage more accessible to a couple who are both earning the national average income, or indeed to an individual as those earning a median income or above (€45,256 in 2016¹¹⁹) can avail of the scheme where they would not qualify if applying with a partner of the same income. Economic policies such as this are designed to ensure an efficient market for the redistribution of housing and property so that the market, rather than the State, continues to bear primary responsibility. Upon close examination of these policies, a possible criticism that can be proffered is that encouraging first-time buyers to make the leap from rental to ownership continues to prioritise the rights of private ownership in the State and marginalise those who are not in a position to be homeowners. First-time buyer schemes aim to realise the ideal of high rates of homeownership, a goal which is linked to a stable political environment and increased social mobility.¹²⁰

Conclusion Part IV

Those who cannot participate in the housing market for social or financial reasons can often turn to social housing as a mechanism to secure accommodation.¹²¹ The government has promulgated various policy measures in the social housing realm to combat the inadequacies of the system as they present problems; these include proving housing benefits to assist those on low incomes,¹²² giving those options

across the EU. Available at <ec.europa.eu/eurostat/databrowser/bookmark/994c7270-62bd-446a-b474-bf3878c5049e?lang=en> accessed 30/07/21.

¹¹⁹ CSO Geographical Profiles of Income in Ireland 2016, available at <www.cso.ie/en/releasesandpublications/ep/p-gpii/geographicalprofilesofincomeinireland2016/> accessed 18/07/21.

¹²⁰ Peter Marcuse 'Abandonment Gentrification and Displacement'(1985) *Urban Law Journal*, Vol 28, 195.

¹²¹ 61,800 households currently qualify for social housing. See the Department of Housing, '9.9% decrease in the number of households on social housing waiting list nationally' Press Release (9 March 2021) available at <www.gov.ie/en/press-release/71cfc-99-decrease-in-the-number-of-households-on-social-housing-waiting-list-nationally/> accessed 30/07/21.

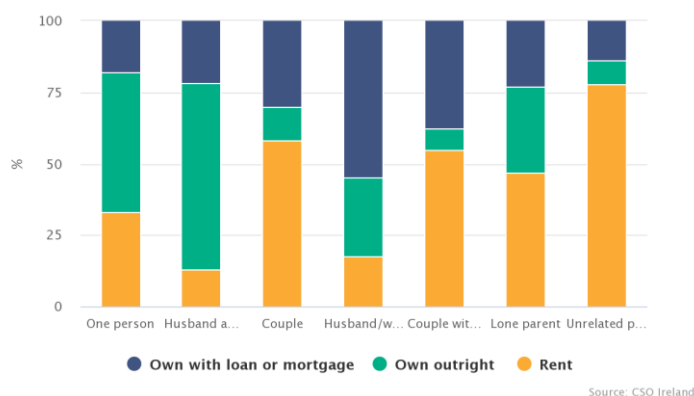
¹²² Such as the HAP and rent supplement scheme.

to buy their home at discount as sitting tenants,¹²³ proving equal opportunities in access and incentives to buy on private market, adapting accommodation for special needs,¹²⁴ and providing of support and care in specific projects.¹²⁵ Social welfare is typically indiscriminate as it exists to serve the needs of those who do not fall into the ‘ordinary majority’ and it is not generally an area where a marital relationship would have an impact on the degree of welfare you are entitled to. For example, those who apply as a couple receive the same money per person in the Rent Supplement Scheme.¹²⁶ Therefore, social welfare is a potentially useful sector in which marginalised or disadvantaged groups can avail of State support and overcome the challenged they face in the private sector.

6.4 IRELAND’S ‘DEMANDING’ DEMOGRAPHIC

In this section, I intend to explore the social disposition of the population which as of the 2016 Census are firstly, in owner-occupation of the housing supply in Ireland and secondly, are creating the demand for the redistribution and increase in supply of housing units. Outright ownership of a house or property is the most popular tenure type in Ireland with 611,877 dwellings; 535,675 dwellings were owned with a mortgage and, just under half a million of dwellings were rented.¹²⁷ The CSO has also stated that ‘households which were occupied by a husband and wife only were the most likely type of household to be owned outright’ in 2016.¹²⁸ A married couple with children constituted 65.3% of those who own their house outright or with a loan and that 48.9% of individuals also owned their home outright. This high number of individuals owning their home outright could be potentially attributed to the aging population in Ireland; in 2016, 13.4% of the population were aged over 65 years of age which has steadily increased from 10.7% in

Figure 3.7 Tenure by household composition, 2016



¹²³ Tenant (Incremental) Purchase Scheme, April 2021 <<https://www.gov.ie/en/service/12558-incremental-tenant-purchase-scheme-for-existing-local-authority-houses/>>

¹²⁴ Housing Adaptation Grants for older people and people with a disability (Private Houses) <www.gov.ie/en/service/6636c-housing-adaptation-grants-for-older-people-and-people-with-a-disability/>

¹²⁵ Padraic Kenna (n 95).

¹²⁶ Rates available at

<https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/supplementary_welfare_schemes/rent_supplement.html>

¹²⁷ Census of Population 2016, ‘Profile 1 Housing in Ireland Tenure & Rent’, available at <www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/tr/> accessed 22/07/21.

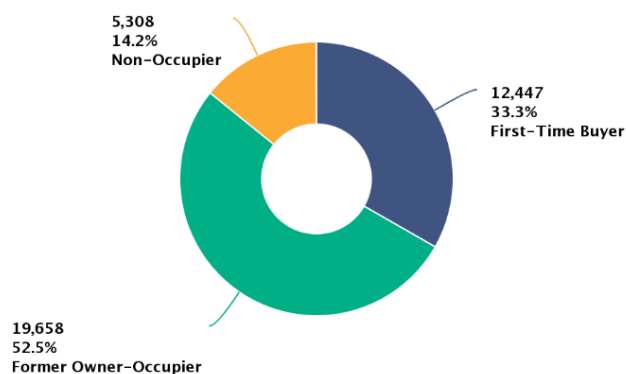
¹²⁸ *ibid*

1981.¹²⁹ In contrast, 58% of non-married couples and 54% of non-married couple with children rent their accommodation.

The main sources of demand for housing stock in Ireland include a natural increase in population, positive net migration, a decrease in the number of people per household and finally, replacement of obsolescent stock.¹³⁰ Below is a diagram outlining the type of buyer who conducted housing transactions on the private market in 2020. A third of those who transacted were first-time buyers and thus were an addition to the demand for housing.

Below see Residential Property Price Index November 2020: Additional Indicators¹³¹

Figure 3.2: Household market dwellings transacted by buyer type, December 2020



Source: CSO Ireland

It is clear that many social factors, including the legislative regime which is protective of property ownership, have produced a normative structure which places marriage and homeownership as conjunctive lifestyle choices for the majority of the Irish population. Additionally, the

legislative and policy regimes do not provide an equal degree of security of tenure for single individuals because of this dominant normative structure. In 2016, 48.9% of one person households owned their home outright which could be attributed to the aging population of Ireland, as many older people who have paid off their mortgage remain in their homes alone for longer than in previous times when older members of the family co-habited with their children's family. With regard to demand for social housing, as of November 2020, 61,880 households were recognised as qualifying for State support.¹³²

¹²⁹ *ibid* 'Profile 3 An Age Profile of Ireland, Figure 1.' It is estimated that close to ¼ of Ireland's population will be >65 years by 2051.

¹³⁰ Property Industry Ireland, 'Estimating Ireland's Long-Run Housing Demand' (April 2019).

¹³¹ CSO Ireland 'Residential Property Price Index November 2020 – Additional Indicators', available at <www.cso.ie/en/releasesandpublications/ep/p-rppi/residentialpropertypriceindexnovember2020/additionalindicators/> accessed 13/07/21.

¹³² Department of Housing press release, '9.9% decrease in the number of households on social housing waiting list nationally' (9 March 2021) available at <www.gov.ie/en/press-release/71cfc-99-decrease-in-the-number-of-households-on-social-housing-waiting-list-nationally/> accessed 30/07/21.

As of May 2021, 7991 people, including 908 families, are homeless and relying on emergency accommodation in Ireland.¹³³

6.5 SOCIAL AND ECONOMIC INCENTIVES WHICH PROMOTE MARRIAGE

As of 2021, the average price of a family home in Dublin is €427,167 compared to an average of €235,028 for a three-bedroom semi-detached house outside the capital.¹³⁴ The normal maximum mortgage level is capped at 3.5 times the person's gross annual income. This means that in Dublin, an income of >€122,000 is the minimum income required for a mortgage to buy the average home. Thus, the majority of people need two incomes to secure a mortgage for a house. From the CSO statistics, the people most likely to couple up to purchase a house are married couples. This may be because of a correlation in the values of security in a marital relationship and the desire for a secure relationship status to purchase a long-term loan for the purchase of a home.

Financial benefits with regards to the taxation system¹³⁵ may also promote the popularity of marital home ownership as once the change of status is registered, tax reliefs can save a married couple up to €4,600/year in the right set of circumstances through a joint assessment of their tax credits.¹³⁶ The system of income splitting which was conducted in Ireland between 1980-1999 financially rewarded marriage by allowing 100% transferability of rates and bands however the tax policies of the past decade have meant that an aggregative tax system for married couples is typically financially punitive; the transferability rate was reduced to 32% as of 2002.¹³⁷ Therefore, there are certain tax rewards for marital status, although they have been reduced in recent times. I question whether the legal/cultural history and tradition of tax incentives may have encouraged people to marry even when in reality, the benefits are much reduced as of 2021.

¹³³ Focus Ireland, Latest Figures on Homelessness in Ireland, available at < www.focusireland.ie/resource-hub/latest-figures-homelessness-ireland/> accessed 22/07/21.

¹³⁴ Darren Hughes, 'Average House Price per County' (REA News 2021) available at <www.realestatealliance.ie/rea-average-house-price-per-county-p7025> accessed 19/07/21.

¹³⁵ See specifically, the Taxes Consolidation Act, 1997. Section 461 refers to the married persons allowances. Part 44, Chapter 1 Section 1017 refers to a joint assessment. Chapter 2 outlines the rules about capital gains tax. Section 881 denotes returns on income by married persons.

¹³⁶ In terms of PAYE tax benefits, a married couple can save money in circumstances where both partners are working but one pays tax at a higher rate, if both you partners are working and one spouse has unused credits due to their low income, if only one spouse is working, if one spouse cares for children in the home, or if the partners are disposing of assets or making investments. See Revenue 'Marriage and Civil Partnerships: Joint Assessment' (April 2021) available at <www.revenue.ie/en/life-events-and-personal-circumstances/marital-status/marriage-and-civil-partnerships/joint-assessment.aspx> accessed 4/07/21.

¹³⁷ Karina Doorley, 'Taxation, Work and Gender Equality in Ireland', (2018) IZA Discussion Papers, No. 11495, Institute of Labour Economics (IZA), 6.

Social researchers have noted that in many countries around the world, those from disadvantaged socioeconomic backgrounds are less likely to get married and more likely to get divorced, and further that 'disadvantaged individuals are more likely to meet partners ... that exacerbate their disadvantages, whereas advantaged individuals are more likely to meet partners ... that consolidate their advantages'.¹³⁸ This tendency is one factor which has significantly widened the income gap between those with less advantage and those at more advantage quite significantly. Those with higher incomes are more likely to be educated at third level and are more likely to be married which generally leads to financial and social stability;¹³⁹ thus the conditions for purchase of a mortgage or investment in a property asset align well with the demographic who have the greatest access because of wealth. The median net wealth for owner occupied households was €287,800, in 2018 which is a significantly higher value than €6,500 for rented households.¹⁴⁰ By this logic, socioeconomic factors such as education weigh heavily in marital relationships in that those who are married are typically wealthier than non-married couples. Education, wealth, marriage, and property are inherently connected, and those who do not have access to one or more of those opportunities or advantages are more likely to be unable to access the private property market. It is plausible to draw a conclusion that those who are wealthier, and therefore typically married, are owners of real property.

6.6 HOUSING INVESTMENT AND MARITAL CONTRACTS

Housing is a distinctive commodity in economic theory as it is both a consumption and an investment item.¹⁴¹ The investment aspect of home ownership is important for our discussion of the connection between marriage and property rights. I intend to discuss further a possible comparison which could be drawn between the type of relationship that results from a marriage and an ensuing home purchase and that of commercial property investment. These two areas of law have long been considered as distinctly separate due to the different relationship style and bargaining power between two partners of a marriage and two partners in a commercial enterprise. Yet I believe there is value in viewing this

¹³⁸ B. R. Karney, 'Socioeconomic Status and Intimate Relationships' (2021) *Annual Review of Psychology* (72) 391–414.

¹³⁹ CSO Household Finance and Consumption Survey 2018 – Financial Assets, available at <www.cso.ie/en/releasesandpublications/ep/p-hfcs/householdfinanceandconsumptionsurvey2018/> accessed 1/08/21.

¹⁴⁰ *ibid* 'Table 5.2' <<https://www.cso.ie/en/releasesandpublications/ep/p-hfcs/householdfinanceandconsumptionsurvey2018/wealth/>> accessed 01/07/21.

¹⁴¹ As a consumption item, housing and mortgages are subject to the same commercialisation as many other goods; one only needs to switch on the television to be exposed to a stream of advertisements promoting mortgages to first-time buyers, older couples wanting to downsize and middle-aged men and women looking to upgrade or remodel their home. Padraic Kenna, 'Perspectives on the Irish Housing System' [3-07].

question of the connection between marriage and property rights through a commercial rather than personal lens to understand the financial benefits of investing in a 'real property' asset.

Marital Contract

Marriage law creates a legally regulated relationship between two individuals which has long been considered to incorporate elements of contract law.¹⁴² A contract involves the making of an offer, acceptance of this offer with consideration, mutuality of obligation, competency and capacity to enter the contract and, in certain circumstances, a written instrument as evidence of the agreement. These terms also exist in a marital relationship; the change in relationship status is offered by one party and accepted by another with consideration in the form of a mutual exchange of love, money, family and loyalty. The change in status of the parties is recorded at a local civil registration office which subjects the parties to the marriage laws of the State.¹⁴³ Those who are incapable or incompetent to enter a marriage render it void *ab initio*. One scholar has written that '(g)iven some modest assumptions about the objectives of the parties, a contractual paradigm strongly supports marital stability and encourages mutual investment in the relationship.' Fundamentally, a financial investment made by two people is vastly more secure than one made by an individual; in an egalitarian relationship, the liability for debt on a mortgage is halved, and the opportunity to raise capital is doubled. A 50% contribution to the purchase price results in only a 50% legal and equitable share in the property but given the size and nature of the asset that is a home, this is not an issue that a married couple would typically encounter.

Married couples are legally bound in their obligations to one another as divorce or dissolution often eventuates should the relationship fail.¹⁴⁴ In the event of a marital breakdown, spouses can seek legal recourse through the specifically designated Family Law Courts to objectively assess the distribution of the marital property and assets between the two parties, yet non-marital (excluding civil partners)¹⁴⁵ cohabiting couples are not treated as equivalent to married couples by the courts.¹⁴⁶ Therefore, the marital structure gives partners greater contractual protection over their investment than is involved in a commercial partnership but the two relationships are closer together than they once were. Following this logic, it is a plausible suggestion that married couples are more inclined than a non-marital couple to make a long-term investment in a mutual asset due to the great degree of legal

¹⁴² Elizabeth Scott & Robert Scott, 'Marriage as a Relational Contract' (1998) *Virginia Law Review*, Vol 84(7). Also, Cheshire, Fifoot & Furmstones *Law of Contract* (17th edn, OUP 2017) 9.

¹⁴³ Section 2 of the Marriage Law (Ireland) Amendment Act 1863.

¹⁴⁴ Scott & Scott, 'Marriage as a Relational Contract' (n 141) 1231.

¹⁴⁵ Sections 116 - 121 of the 2010 Act empower the court to make orders relating to personal finances after the dissolution of a civil partnership.

¹⁴⁶ If they are living together for less than 5 years. With regards to mortgagees remedies and possession, Section 32 of the 2010 Act extends the Section 7 1976 Act provision to civil partnerships and co-inhabitants.

protection of their relationship and their mutually held property. Furthermore, there is a defined course of legal action should the relationship fail which is aimed at securing a correct adjustment of the ownership title to their respective assets.

Legislative Protection of Marriage

The law governing divorce in Ireland has long taken a protectionist stance of the marital relationship; the prohibition on divorce was not removed until 1996 and required that the parties be living apart for four of the five previous years.¹⁴⁷ This period was reduced to two of three previous years by Section 3(1) of the Family Law Act 2019 and allowed for instances where the partners were not in an intimate relationship but could not occupy separate dwellings due to practical constraints. Before 1996, marriage was an highly committed legal relationship, which was hard to break away from in instances where no party was at fault. Therefore, the relationship that resulted was extremely stable and ideal to make a large financial investment such as the purchase of a home. Although the rules of divorce procedure have relaxed significantly due to the Family Law Act of 2019, it is clear that the State still imposes some level of socio-legal commitment into the private marital relationships of Irish citizens. Indeed the ability to avail of a no-fault divorce further reduces the gap between protections for marital relationships and other contractual relationships as it is readily possible to dissolve the legal relationship in both situations and divide the property between the respective partners according to their rightful share.

It must be noted that the safeguards for the property in a marital relationship extend far beyond that of the protections available for a commercial enterprise in a contractual relationship with another commercial party. For example, the Family Home Protection Act 1976 was designed to provide legislative protection of the respective spouse's interest in their marital home;¹⁴⁸ protections include the rule that one spouse cannot convey or alienate their title to the property without the consent of the other spouse.¹⁴⁹ This protection was extended to Civil Partners (but not cohabitants) through Section 28 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.¹⁵⁰ Furthermore, there is a common law presumption of a joint tenancy when both spouses have registered legal title to the property which provides security with regards to succession if one spouse passes away

¹⁴⁷ Family Law (Divorce) Act, 1996 Section 5(1).

¹⁴⁸ Section 2(1) of the 1976 Act states that 'In this Act "family home" means, primarily, a dwelling in which a married couple ordinarily reside'.

¹⁴⁹ Section 3(1) of the 1976 Act.

¹⁵⁰ '(1) Where a civil partner, without the prior consent in writing of the other civil partner, purports to convey an interest in the shared home to a person except the other civil partner, then, the purported conveyance is void.'

before the other.¹⁵¹ These protections emerged from a society where women were at a disadvantage in terms of their rights to property when compared to their husbands. These pieces of legislation are designed to combat inequality in the relationship that the parties have between themselves and towards their shared asset; the family (or marital) home.

The Contractual Theory in Practice

The most noticeable example of this contractual partnership at play is in the area of mortgages. The Unfair Terms in Consumer Contract Regulations 1996, implementing Council Directive 93/13/EEC deals with unfair terms in consumer contracts. The regulations apply when mortgage contracts are not individually negotiated i.e. when they are standard form contracts. The contract often implies an imbalance in bargaining power between the mortgagor and the mortgagee with the large corporate entity having much more advantage than a private individual.¹⁵² The regulations have ensured that a mortgage as a consumer contract, does not make unfair gain from the commercial ignorance of a typical private consumer; Article 3(1) reads, "A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer." In the case of *AIB v Coughlan*, Mr Justice Barret held that a Court must make an assessment of the contents of a consumer contract with a view to uncovering unfair terms which might prevent a repossession order for a property from succeeding.¹⁵³ However, the Supreme Court decision recently highlighted that a "price variation" clause of a mortgage is exempt from the Unfair Terms Regulation, provided that the variation is justified and that notice is served to the mortgagees.¹⁵⁴ To further balance the relationship, the Land and Conveyancing Law Reform Amendment Act 2019 broadened the discretionary powers of the Irish Courts to adjourn or stay proceedings for mortgage repossessions while an alternative repayment structure is sought.¹⁵⁵

In contrast, Part 3 of the Residential Tenancies Act provides that variation (typically an increase) in rents is legal provided that the rent does not exceed the market rate¹⁵⁶ or occur more than once every 12 months.¹⁵⁷ Given that the market rent increased by 8.3% nationally between 2018 and 2019,¹⁵⁸ the

¹⁵¹ Registration of Title Act 1964 Section 91(2).

¹⁵² As per the decision in *Aziz v Caixa d'Estalvis de Catalunya, Tarragona I Manresa* (Catalunyacaixa) Case C – 415/11.

¹⁵³ *Allied Irish Bank PLC v Coughlan & anor.* [2016] IEHC 752.

¹⁵⁴ *Pepper Finance Corporation (Ireland) DAC v Brian Cannon and Christina Cannon* [2020] IESC 2.

¹⁵⁵ See Section 3 of the 2019 Act.

¹⁵⁶ Section 19 of the RTA 2004.

¹⁵⁷ *Ibid* Section 20.

¹⁵⁸ 'The Daft.ie Rental Price Report' (2019 Q2) available at <www.rte.ie/documents/news/2019/05/2019-q1-rentalprice-daftreport.pdf>

market variation figure has proven to be a relatively useless protection for the rental sector. As will be explained further, legislation which places greater restrictions on rent increases may be forthcoming after the argument that the constitutional protection of private property was preventing legislative action in the rental market was deconstructed by the academics Hogan and Keyes.¹⁵⁹ As of August 2021 however, the legal protections afforded to those purchasing mortgages and the promotion of homeownership as a consumer good and as a social ideal continues to dominate the housing market.

6.7 THE FUTURE OF IRELAND'S 'DEMANDING' POPULATION

In April 2019, Property Industry Ireland published the Ibec report titled 'Estimating Ireland's Long-run Housing Demand' which highlighted that Ireland should expect a decline of number of people in the average household to 2.12 persons/household by 2051 and an increasing in the quantity of one or two person households.¹⁶⁰ From these statistics, it is clear that the traditional Irish 4-bedroom family home with three generations under one roof is no longer going to suit the needs of the demographic and that smaller apartment's and residences are going to be in greater demand.¹⁶¹ Demand will also be influenced by the growth in the Irish population and the flow of migration due to economic or climate factors.

The report predicts an 'increasing number of single-person households reflecting improved longevity as well as relationship breakdown.' Ireland is a gradually aging population as life expectancy has increasing dramatically; the group expects that close to a quarter of the population will be aged over 65 years by 2051, which is a substantial increase from >12% in 2016. The question I put forward is whether the Irish housing market already or will adapt to serve the needs of this future demographic in time, or whether the current policy pathway is going to cause further problems in the future. There is a strong possibility that the 1,187,081 detached and semi-detached houses in Ireland will be filled with retired older people living alone or with a partner, which is an inefficient use of housing space in urban areas where every meter squared could be made use of. It is clear that some creative policy measures are going to be required to ensure that there is not a delay in the redistribution of properties or a mismatch between who needs the property and the people who occupy it.

The report further predicts a dramatic decrease in rates of homeownership with a loan from 32.9% in 2019 to 16.2% in 2051. This could be attributed to the aging population repaying their mortgages and younger generations moving towards renting as the preferred type of tenure (provided suitable

¹⁵⁹ Hogan, Hilary and Keyes, Finn, 'The Housing Crisis and the Constitution' Irish Jurist (November 16, 2020).

¹⁶⁰ Property Industry Ireland (n 133).

¹⁶¹ *ibid* 5.

legislative protections are instigated). Single person households have steadily increased from 1979 to 2016 with the figure now standing at 23.4%. This will only increase, and certainly the type of housing available on the market must suit the needs of this demographic.

7 THE RENTAL SECTOR

On average, the public and private rental market comprises of about a third of all residential occupancies in Ireland¹⁶² and is often regarded as a steppingstone to the goal of homeownership. Section 11(3) of the LCLRA 2009 defines a leasehold estate in land as ‘...the estate which arises when a tenancy is created for any period of time or any recurring period...’. A right of access or occupation of land is created when a rent becomes payable to the owner under a tenancy agreement.¹⁶³ Commercial contracts for rights of access or occupation generally constitute licence agreements which involve personal rights over land. In contrast, the terms of a residential lease delineate more extensive property rights and the obligations between the parties which are partially regulated by the Residential Tenancies Act 2004.¹⁶⁴ The RTA had the intended objective of balancing the relationship between the landlord and tenant while ensuring that the primacy of ownership rights in property were not unduly interfered with. The Act introduced reforms such as the dispute resolution service using mediation and adjudication (the Residential Tenancies Board), registration of tenancies with the RTB, statutory rights and obligations for landlords and tenants and introduced security of tenure for tenants.¹⁶⁵ It also provided that rents should be set at market levels. A landlord has comparatively broad justification for eviction regardless of the length of the tenancy.¹⁶⁶

In contrast, a freehold owner of a property can only be interfered with in very limited circumstances thus making their tenure more secure; say if the property is acquired compulsorily by the State or if a mortgagor succeeds in an application for repossession. There were 275 repossessions due to mortgage arrears made in 2020¹⁶⁷ and the number of registered tenancies decreased by 4,802 in 2020.¹⁶⁸ Thus, a

¹⁶² Census 2016 figures: 36% in urban areas (figure 3.3), and 13.1% in rural areas (figure 3.4). available at <www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/tr/> accessed 19/07/21.

¹⁶³ Section 4(d) of the LCLRA 2009.

¹⁶⁴ For example, Section 12(a) of the Residential Tenancies Act 2004 provides that a landlord should not interfere with the tenants ‘peaceful and exclusive occupation of the dwelling’.

¹⁶⁵ Section 28 of the RTA 2004 which defines a ‘Part Four’ tenancy. A tenant can only avail of security of tenure under the 2004 Act if their occupation of a dwelling exceeds 6 months

¹⁶⁶ Section 34 of the RTA 2004 states that a tenancy can be terminated if the landlord wishes to occupy the dwelling with his own family members.

¹⁶⁷ Through a court order, abandonment or disposal of the property. Central Bank of Ireland ‘Residential Mortgage Arrears and Repossession Statistics’

¹⁶⁸ Q1-Q4 2020 | RTB Tenancy Registration Data.

person who holds leasehold rather than freehold rights in land will be subject to a great deal less security and furthermore, lesser regulatory protection of those rights.

Eoin O’Sullivan has described the rental market in Ireland as divided between “the high-rent, largely unregulated, profit market offering no security of tenure and a 'command economy' public/social rental system with heavily restricted 'poor law' access”.¹⁶⁹ He further notes how that as a consequence of this, “high rates of home ownership become the norm for households which are either ineligible for social rental housing and/or are unwilling to accept the insecurity and high rents of the private rental market.”¹⁷⁰ Many economists and politicians like to place the rental sector solely at the disposal of the transient population who they believe are willing to accept such insecurity; that is, the growing proportion of the population who are pursuing advancement in education, personal wealth, or marriage but who have not yet achieved it. This section of the population is less likely to have access to or financial ability to commit to a long-term mortgage arrangement.¹⁷¹ The rental market exists to supplement the housing market, to serve those who are forced by necessity or desire to lease rights over property instead of purchasing them outright. However, the supplementary system of occupation is squeezing those dependent on it; due to the lack of regulative intervention into the rate of rents and the security afforded to tenants, commercial actors are making huge profit from charging market-rate rents which are simply unaffordable to most renters.¹⁷²

7.1 THE DEMANDING DEMOGRAPHIC OF THE RENTAL SECTOR

The 2016 Census found that 30% of all residential occupancies in Ireland were leasehold in nature with 326,500 households holding private rental tenancies. These numbers are only going to increase; the PII predict that private renters will constitute 35.7% of the population by 2051.¹⁷³ Every year there can be as great as a 100,000 change in tenants¹⁷⁴ which makes the rental market home to the transient, rather

¹⁶⁹ *Ibid* (n 69) 330.

¹⁷⁰ *ibid*.

¹⁷¹ Kieran McKeown, Jonathan Pratschke & Trutz Haase, Report on ‘Family well-being: what makes a difference?’ (The Céifin Centre Oct 2003). The authors state that ‘two-parent married families tend to be concentrated in higher social classes’ - 2.6 Socio-Economic Influences on Family Types, pp 24. Further, that ‘education is one of the strongest influences on social class location, and usually precedes rather than follows family formation, this suggests that social class should primarily be viewed as a causal factor in relation to family structure, with the social class background of the family of origin playing a key role’ pp 25.

¹⁷² The commercial opportunity in Ireland’s rental sector has attracted numerous international and national investment funds to buy up property in order to rent it on the private market for profit. For example, Deputy Thomas Gould has highlighted that ‘One of the largest investment funds in this State took in almost €30 million in rent last year.’ Ban on Rent Increases Bill 2021, Dáil Éireann debate (2nd stage of the Bill) Tuesday, 6 Jul 2021.

¹⁷³ PII, ‘Estimating Ireland’s long-run housing demand’ (April 2019), Table 4.

¹⁷⁴ RTB Annual Report 2019, ‘Table 25’ denotes the 364k tenancies registered that year – it can be estimated that a third of these were new or a renewal of a tenancy.

than socially stable, population of Ireland. Students, immigrants, and those in short-term tenancies constitute a great proportion of these transient (and unprotected) households. What is not clear however, is whether this third who change tenancy every year are forced to do so because of the tenancy structure, or whether the volatile system appeals to their transient stage of life.

Interestingly, the 2016 Census found that 58.3% of non-marital couples, 54.3% of couples with children and 45% of one parent households were renting their accommodation. These figures are a high proportion in comparison to the 12.9% of married couples and 17.5% of married couples with kids who were renting at that time also.¹⁷⁵ It can be plausibly inferred from these statistics that gaining marital status more often than not leads to the termination of a lease and to the purchase of a home outright or using a mortgage as the preferred type of occupancy. Furthermore, four out of every five homes which consisted of unrelated persons were rented in 2016; 92% of 21-year-olds rented accommodation, compared to 18.5% of 56-year-olds and 10% of 83-year-olds.¹⁷⁶ Thus, the rental market is catering mostly to those who do not (yet) fit into a marital family unit. The type of accommodation available to renters varies greatly for urban and rural areas. In 2016, 12% of people lived in a flat/apartment, but the PII predict that this number will rise to 20% by 2051. The CSO states that in 2016, 40% of dwellings were detached houses which are the most common dwelling type in Ireland, and 28% of households reside in semi-detached houses.

It is clear that the shifting demographic of Irish society will create a greater demand for rented apartments in urban centres in particular. Sustainable housing which suits the needs of this population must be developed in conjunction with increasing the legislative protections for renters in terms of the length of leases and the rent payable on a tenancy. This will be discussed further in the next section.

7.2 INCREASING REGULATION OF THE RENTAL SECTOR

The main absence of legislative action is in the area of rent regulation which has caused an inflation of rent prices in urban areas where demand for rental accommodation is high. Part 3 of the RTA 2004 mandates that rents should not be increased over the market rate, however the market rate has seen growth of as much as 8.6% in the past several years and is therefore a highly ambiguous indicator. Between 2010 and 2019, Ireland's average rent prices have increased by 63% and our housing costs are the highest in Europe at 77% above the EU average.¹⁷⁷ The Residential Tenancies Board published

¹⁷⁵ CSO, Profile 1 Housing in Ireland, Tenure and Rent, 'Figure 3.7 Tenure by Household Composition, 2016' <<https://www.cso.ie/en/releasesandpublications/ep/p-cp1hii/cp1hii/tr/>> accessed 04/07/21

¹⁷⁶ *Ibid* 'Figure 3.5: Tenure Status by Age of Householder, 2016'.

¹⁷⁷ Eurostat Survey of House Price Index (2015 = 100) - Annual Data (PRC_HPI_A) 'Evolution of house prices and rents' available at <ec.europa.eu/eurostat/cache/digpub/housing/bloc-2a.html?lang=en> accessed 19/07/21.

their estimate of the standardised average rent for a three-bedroom house in 2021.¹⁷⁸ The average rent is €1,282/month nationally, with Dublin rents averaging around €2,057.¹⁷⁹ These extremely high rents, in combination with insecure leases, are causing an accommodation crisis for the population renting in Ireland and is putting great pressure on the social welfare system to provide for those unable to engage in the private sphere. It is plausible that squeezing this vulnerable population on the basis of their relative social instability could amount to a form of subtle social discrimination.¹⁸⁰

The State have intervened periodically using law and policy to readjust the supply to the market for private rented accommodation.¹⁸¹ Rent Pressure Zones were introduced by the Planning and Development (Housing) and Residential Tenancies Act 2016. Under this legislation, designated areas could not increase rents by 4% per annum; as of July 2021 this percentage has been reduced to any amount greater than general inflation, as recorded by the Harmonised Index of the Consumer Price.¹⁸² Section 34 of the 2004 RTA imposed greater restrictions on terminations and evictions than had previously existed, however they are still relatively broad defences. For example, a landlord may terminate a protected tenancy if they intend to renovate the property, let it to a family member or sell it within three months of the eviction. Mark Bennett notes how the idea of security of tenure manifests itself in legal protections stating these durational protections and grounds for termination.¹⁸³ Comparatively, the European private rental market regulations provide for much longer-term leases which could be indefinite in duration, and only allow termination of a lease in highly limited circumstances.¹⁸⁴

The State has imposed minimum housing standards¹⁸⁵ for rental accommodation which led to the prohibition on bed-sits as a form of accommodation due to the lack of separate bathroom facilities. Prior to the introduction of the regulations, upwards of 5,695 low-income small households had relied on bed-sits as a form of accommodation.¹⁸⁶ It has been acknowledged that a regeneration of this form

¹⁷⁸ The Residential Tenancies Board Rent Index, available at <www.rtb.ie/research/ar> accessed July 2021.

¹⁷⁹ *Ibid* Quarter 1 2021, available at <www.rtb.ie/images/uploads/general/Final_-_RTB_Rent_Index_Q1_2021_infographic_no._1__1.pdf> accessed July 2021.

¹⁸⁰ Article 40.1 of the Irish Constitution reads that ' **All citizens shall**, as human persons, **be held equal before the law**. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of **social function**' (emphasis added).

¹⁸¹ Padraic Kenna [96].

¹⁸² Residential Tenancies (No. 2) Act 2021, for more information see <www.rtb.ie/rent-pressure-zones>.

¹⁸³ M Bennett 'Security of Tenure for Generation Rent: Irish and Scottish Approaches' (2016) 47 Victoria U Wellington L Rev 363, 370.

¹⁸⁴ Christine Whitehead et al. "The private rented sector in the new century: a comparative approach." (2012) Copenhagen: Boligokonimisk Videncenter.

¹⁸⁵ Housing (Standards for Rented Houses) Regulations 2008-2019.

¹⁸⁶ Census of the Population 2011 Statistical Tables: Table 4, available at <www.cso.ie/en/media/csoie/census/documents/census2011profile4/Profile4_Statistical_Tables_and_Appendices_and_Form.pdf> accessed 29/07/21.

of dense, cheap, lower quality accommodation (which meets the housing standards) may greatly help to reduce the number of homeless people in Ireland.¹⁸⁷ Social welfare schemes such as the Rent Supplement and the Housing Assistance Payment help those who are entitled to social welfare to meet rental payments; however, those who do not qualify for welfare support such as third-level students remain subject to the whims of the private market. Approved Housing Bodies are also used as a public policy mechanism to support the private rental market.

Constitutional Objections

The academics Hogan and Keyes recently noted that '(s)ince 2010, at least thirteen Private Members' Bills designed to tackle the housing crisis have been rejected by the Government of the day, citing constitutional concerns.'¹⁸⁸ These constitutional concerns have been debunked by the academics and as a result, Deputy Eoin O'Broin introduced the Ban on Rent Increases Bill 2021 to place a three-year ban on rent increases unless they are directly linked to inflation index. The Ban on Rent Increases Bill 2021 would essentially expand the rent pressure zones to the whole of the country. Interestingly, the political rhetoric in the debate of this bill highlights the fact that a variety of voices in the community have a stake in the passing of a Bill such as this. Speaking at Dáil Éireann during the 2nd stage of the Bill on Tuesday, 6 Jul 2021 O'Broin stated that '...renters continued to be burdened with ever-increasing rents, not only placing themselves in enormous **family hardship...**' (emphasis added) whereas Deputy Denise Mitchell spoke for young people; '(f)or years, we... have called for a rent freeze to stop rents, which are already out of control, from increasing further and further **hammering young people.**' Deputy Thomas Gould spoke in favour of protecting the poorer population; '... people living on such low incomes (€363/week) and ... it is okay for rents to increase by 8% this year'. It is clear from this debate that the distinction between marital families and non-marital families with regards to their position in the property system has not been considered yet as a factor worth taking into consideration. It is positive to note that young people, those who are less wealthy and families who are dependent on rented accommodation are being represented in politics. It may be helpful for the

¹⁸⁷ John Fitzgerald 'Understanding why homes are vacant can help solve housing crisis' Irish Times May 2017 <www.irishtimes.com/business/economy/understanding-why-homes-are-vacant-can-help-solve-housing-crisis-1.3071526> accessed 27/07/21.

¹⁸⁸ *ibid* (n 162) 16. The authors note that the case of *Blake v AG* [1982] IR 117, [1981] IRLM 34 was the seminal decision of the Supreme Court which upheld the invalidation of the Rent Restrictions Acts 1946-1960 on the basis of their arbitrary and discriminatory nature. The Oireachtas has understood this decision (and the following case of *Re Article 26 and The Housing (Private Rented Dwellings) Bill, 1981* [1983] 1 IR 181 to mean that under Article 40.3 landlords' property rights are robustly protected. This has justified the numerous rejections of Bills entered into the Dáil by different parties which were seeking to place restrictions on rents as a method of resolving the Irish housing crisis. For example, the Residential Tenancies (Housing Emergency Measures in the Public Interest) (Amendment) Bill 2016, the Residential Tenancies (Student rents, rights and Protections) Bill 2018, Rent Freeze (Fair Rent) Bill 2019.

Government to understand that the majority of those suffering from the lack of rental security are indeed non-marital units of people when discussing this Bill or others like it in the future.

Conclusion Part V

Many policy regimes have been suggested in order to improve the rental sector in recent years. The Social Housing Strategy 2021 is intended to focus on the objective that every household in Ireland will have access to secure, good quality housing suited to their needs at an affordable price in a sustainable community.¹⁸⁹ The cost-rental scheme contained in Part 3 of the Affordable Housing Act 2021 provides for not-for-profit rental housing organised by Approved Housing Bodies.¹⁹⁰ The build-to-rent scheme has also increased the quantity of rental accommodation in urban areas but has been snapped up by investment funds who see the commercial advantage in rental accommodation.¹⁹¹ The 'Vienna Model' approach to housing is another possible solution. Under this system, a single person with income <3,300€ a month can apply. Two thirds of the residents in Vienna are living in this form of public housing and the scheme in combination with really protections for tenants has created a highly functioning rental market.¹⁹² Co-living blocks are a controversial housing development and it appears that they are unlikely to become a dominant feature of the market.¹⁹³

The forms of rental accommodation suggested above are generally not suited to families with children, particularly if there are broad grounds for eviction. More variety in the form of supply in combination with a different class of tenancies which is appropriate for families, such as a lifetime or indefinite lease with very limited grounds for eviction would balance the landlords interests with those of the tenant; a landlord commits to a long-term investment with benefits in the form of tax reliefs and the tenant benefits from accommodation security.

8 FINAL CONCLUSIONS

The questions prompted in the introduction were the following: has and does the property law system effect marriage as a form of social order? Does marriage affect the functioning and structure of our

¹⁸⁹ Government Social Housing Strategy 2021 available at <www.gov.ie/en/publication/3279c-social-housing-strategy-2020/> accessed 15/07/21.

¹⁹⁰ The Housing Agency 'Cost Rental Schemes Announced' (February 2021) available at <www.housingagency.ie/news-events/cost-rental-schemes-announced> accessed 19/07/21.

¹⁹¹ Jane Moore 'Explainer: Ireland got its first cost-rental homes today - but how exactly do they work?' (July 7th, 2021) available at <www.thejournal.ie/what-is-cost-rental-model-housing-5487974-Jul2021/> accessed 18/07/21.

¹⁹² *ibid*

¹⁹³ Cónal Thomas 'Green light for another co-living development in Dublin despite ban' (12th June 2021) available at <www.thejournal.ie/co-living-developments-approved-dublin-5462595-Jun2021/> accessed 16/07/21.

system of property law? What is the effect of property law on attitudes, behaviours, institutions, and organisations relating to the maintenance and change of marriage as a social marker, and finally, the inverse of this; what are the effects of the maintenance and change of marriage in society on our system of property law? These questions remain in part unanswered by my research however, I hope that the arguments proffered have stimulated points of discussion for all four corners of the socio-legal research methodology.

Regulation is inherently restrictive and the law is predisposed to serve the 'normal people' in society, whomever they may be. Marriage was my chosen demographic for the purposes of this research, as I believe its predominance in society is at a point of change. How we choose to live is going to change in the future, and the law must recognise this and ensure that the Rule of Law is upheld. I have shown in this research essay that through a combination of normalising power of marriage in Ireland, the legislative and policy agenda's aimed at promoting home ownership, the type of relationship underpinning marriage and how that relates to contractual investment, and the lack of a suitable alternative in rental market has produced a strong correlation between instances of homeownership and marriage. Those not married and without personal capital enough to purchase a home by themselves are forced into a volatile position on the rental market whereby their rights to accommodation are 'personal' rather than proprietary' rendering them 'under the thumb' of a homeowning landlord.

Marriage is a highly nuanced demographical marker with which to analyse the legal system. Deirdre McGowan states that 'Marriage law does not liberate relationship practice. Rather, it categorises lives, divides them into authorised and unauthorised forms, supervises, observes and manages interpersonal conflict, and connects relationship failure to social and economic instability.'¹⁹⁴ A social status like marriage that garners heavy regulation produces the perfect conditions for the immense commitment that is purchasing or owning your own home. One question of many that remains unanswered is whether the philosophical argument that marriage has been normalised by the law extends to the realm of property rights. A further question I am prompted to ask is whether values such as security and stability which connect marriage and homeownership can be statistically gathered and compiled so as to provide further explanation for the correlative evidence.

There are many possible solutions to the current housing crisis, many of which involve increasing supply to an extreme extent. In order to combat the inequality between the private housing market and the private rental market in Ireland however, it is necessary to do the following; firstly, a legislative option must be provided for longer term tenancies which are rent controlled to a greater extent. Long-term

¹⁹⁴ McGowan (n 2) 373.

tenancies can be encouraged through tax incentives and will meet the needs of the population dependent on renting (such as single parent families ineligible for social housing) to provide them with accommodation with vastly improved security of tenure. Secondly, and perhaps more importantly, there is a desperate need to regulate rent prices. The Private Members Bill 'Ban on Rent Increases Bill 2021' is potentially this solution being played out however, it remains to be seen if it will make it through the eleven legislative stages. A creative solution to the 'large house, small household' problem is to encourage the renovation of larger houses into smaller and separate units in urban areas through tax incentives, grants, and subsidies. This simply increases supply and is adaptive rather than reactive; a planning solution which is potentially much more sustainable, affordable, and efficient. Furthermore, the bed-sit style accommodation needs to be reinstated in some capacity which meets the housing standard regulations. A combination of these measures not only produces more supply in the housing market, for both renters and non-renters, but it creates variety in the supply which caters to people of all types. 'Housing law in Ireland is primarily seen as being associated with this market scenario and has yet to develop in a way which can encompass the diverse perspectives which exist in relation to housing in Ireland.'¹⁹⁵

In conclusion, this research has produced a plausible argument that those in marital relationships are socially situated in a situation which is more suited to the purchase of a home and participation in the private housing market than for a non-marital family. A great deal of the literature on this subject is outdated and focused on family property in the event of a marriage breakdown rather than those excluded from family property dispute resolution. My main argument is that homeownership, is not, and cannot be the only solution to the housing market. The more that it is pushed by legislators and politicians as the future of the Irish state, the greater the marginalisation of the renting population. If the policy and political elites by virtue of their homeownership and property wealth are benefiting from the status quo, it is not in their interest to change it. It will be interesting to see whether continued Government inaction on the subject of rental market regulation and the subordination of personal rights to property over that of property rights will amount to a form of social discrimination in the coming years as the form of property interest becomes increasingly intertwined with social status and class.

¹⁹⁵ Padraic Kenna, (n 96) [3-249].

9 BIBLIOGRAPHY FOR LAIDLAW RESEARCH

9.1 ARTICLES OF THE IRISH CONSTITUTION

Article 40.1

Article 40.3.2°

Article 41: The Family, including Article 41.1.4° (34th Amendment to the Constitution).

Article 43: Private Property.

9.2 LEGISLATION

The Land and Conveyancing Law Reform Act 2009

The LCLRA Amendment Acts of 2019 and 2013.

The Family Law (Maintenance of Spouses and Children) Act 1976,

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Residential Tenancies Act 2004 and the Residential Tenancies (No. 2) Act 2021

The Marriage Law (Ireland) Amendment Act, 1863.

Family Home Protection Act, 1976.

Family Law (Divorce) Act, 1996.

European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 implementing Council Directive 1993/13/EEC of 5 April 1993.

The Succession Act, 1965.

The Taxes Consolidation Act, 1997.

Registration of Title Act 1964 Section 91(2).

Housing (Standards for Rented Houses) Regulations 2008-2019.

The Residential Tenancies (Housing Emergency Measures in the Public Interest) (Amendment) Bill 2016

The Residential Tenancies (Student rents, rights and Protections) Bill 2018,

The Rent Freeze (Fair Rent) Bill 2019.

9.3 CASES

Allied Irish Bank PLC v Coughlan & anor. [2016] IEHC 752.

Aziz v Caixa d'Estalvis de Catalunya, Tarragona I Manresa (Catalunyacaixa) Case C – 415/11.

Collective Complaint n° 110/2014 - *International Federation for Human Rights (FIDH) v. Ireland* [23.10.2017].

Fitzpatrick v The Criminal Assets Bureau [2000] 1 IR 217

M (Immigration—Rights of Unborn) v Minister for Justice and Equality [2018] IESC 14

Mahon v Lawlor [2010] IESC 58

O'Brien v Stoutt [1984] IR 316.

Pepper Finance Corporation (Ireland) DAC v Brian Cannon and Christina Cannon [2020] IESC 2.

T.D. v. Minister for Education [2001] IESC 101.

The State (Nicolaou) v An Bord Uchtála [1966] IR 567.

9.4 BOOKS

Alexander, G., & Peñalver, E. *An Introduction to Property Theory* (Cambridge Introductions to Philosophy and Law 2012)

Bentham J., *Principles of the Civil Code*, (Bowring edition 1843)

Cheshire, Fifoot & Furmstones *Law of Contract* (17th edn, OUP 2017).

Dagan H., *Property: Values and Institutions* (Oxford University Press 2011).

Davies M., *Property: Meanings, Histories and Theories* (Routledge, 2007)

de Londras F., *Principles of Irish Land Law* (2nd edn, Clarus Press 2011)

Doyle O. and Hickey T., *Constitutional Law: Text, Cases and Materials* (2nd edn, Clarus Press 2019)

Kahneman D., *Thinking Fast and Slow* (Penguin Books 2012).

Locke J. Chapter V, *Second Treatise of Government*

McGowan D, *The Normalising Power of Marriage Law: An Irish Genealogy 1945 – 2010* (Maynooth University 2015).

Miller JG, *Family Property and Financial Provision* (3rd edn, Tolley Publishing Company 1993).

Norris M., *Property, Family and the Irish Welfare State* (Palgrave Macmillan 2016).

Nozick R., *Anarchy, State and Utopia* (1974).

Polanyi K, *The Great Transformation* (2nd edn, Beacon Press Boston 2001).

Shatter A., *Family Law* (4th edn, Butterworths Tolley 1997)

Walsh R, *Property Rights and Social Justice: Progressive Property in Action* (Cambridge University Press 2021).

9.5 ARTICLES, JOURNALS AND WEBPAGES

A. Davidson 'Alternative models of social housing: tenure patterns and cost renting in New Zealand and Sweden' (1999) *Housing Studies* 14(4), 453–472.

B. R. Karney, 'Socioeconomic Status and Intimate Relationships' (2021) *Annual Review of Psychology* (72) 391–414.

Christine Whitehead et al. 'The private rented sector in the new century: a comparative approach' (2012) Copenhagen: Boligøkonomisk Videncenter.

Cónal Thomas, 'A constitutional right to housing has expressive value but would it force government to act?' *The Journal* (June 8th 2021)

Cónal Thomas 'Green light for another co-living development in Dublin despite ban' *The Journal* (12th June 2021).

Colm Keena, Colin Gleeson 'Divorce applications rise by nearly a third in wake of new legislation' *The Irish Times* (29 June 2021).

Courtney G. Joslin, 'Autonomy in the Family' (2019) 66 *UCLA Law Review* 912.

David N. Schiff, "Socio-Legal Theory: Social Structure and Law." (1976) *The Modern Law Review* 39(3) 287-310.

Daniel Aaronson, 'A Note on the Benefits of Homeownership', (2000) *Journal of Urban Economics*, Vol 47(3).

D. DiPasquale and E. Glaeser, 'Incentives and social capital: Are homeowners better citizens?' (1999) *Journal of Urban Economics* 45, 354-384

Department of Housing, Local Government and Heritage publication 'Social housing support provided by local authorities' (2 December 2020).

Department of Social Protection publication 'Rent Supplement' (29 July 2019).

Deputy Pat Casey speaking at Dáil Éireann debate on Thursday, 18 May 2017, Vol. 951 No. 2.

Deputy Thomas Gould, Ban on Rent Increases Bill 2021, Dáil Éireann debate (2nd stage of the Bill) Tuesday, 6 Jul 2021.

Eoin O'Sullivan, 'Welfare Regimes, Housing and Homelessness in the Republic of Ireland' (2004) *EU Journal of Housing Policy* pp 323.

Elizabeth Scott & Robert Scott, 'Marriage as a Relational Contract' (1998) *Virginia Law Review*, Vol 84(7).

Eveline Ramaekers, 'What is Property Law?' (2017) *Oxford Journal of Legal Studies* 37(3).

Fahey T 'The Family Economy and the Development of Welfare Regimes: A Case Study' (2002) *EU Sociolegal review* 18(1) 51-64.

Fergus Ryan, 'Unfinished Business? Equality and Family Diversity in the Wake of the Irish Marriage Referendum' (2018) *Irish Journal of Family Law*, 21(3) 59-69.

Government Social Housing Strategy 2021.

Hilary Hogan, and Finn Keyes, 'The Housing Crisis and the Constitution' *Irish Jurist* (November 16, 2020).

Housing Adaptation Grants for older people and people with a disability (Private Houses)

Hugh O'Connell, 'Tánaiste Leo Varadkar sets new target of 40,000 homes to be built a year', *Irish Independent*, (June 19 2021).

Jane Moore 'Explainer: Ireland got its first cost-rental homes today - but how exactly do they work?' *The Journal* (July 7th, 2021).

JHM van Erp, 'Contract and Property Law: Distinct, but not Separate' (2013) *European Review of Contract Law* 9(4) 307.

John Fitzgerald 'Understanding why homes are vacant can help solve housing crisis' *The Irish Times* (May 2017).

June Carbone & Naomi Cahn, 'Nonmarriage' (2016) *Maryland Law Review* 55 Vol 76.

K Gray, 'Property in Thin Air' (1991) *CLJ* 50/2.

Karina Doorley, 'Taxation, Work and Gender Equality in Ireland', (2018) IZA Discussion Papers, No. 11495, Institute of Labour Economics, Bonn.

Kathryn O'Sullivan, 'Til death do us part': surviving spouses, civil partners and provision on intestacy in Ireland' (2016) *Journal of Social Welfare and Family Law*, Vol 38, No. 2, 118–139.

Lisa Keenan 'The divorce referendum 2019' (2020) *Irish Political Studies*, 35(1) 80-89.

Kieran McKeown, Jonathan Pratschke & Trutz Haase, Report on 'Family well-being: what makes a difference?' (The Céifin Centre October 2003).

M Bennett, 'Security of Tenure for Generation Rent: Irish and Scottish Approaches' (2016) 47 *Victoria U Wellington L Rev* 363, 370.

Manya Mainza Mooya, 'Why property market forecasts fail' (2021) *Property Management* Vol. 39(2).

Margaret Radin 'Property and Personhood' (1982) 34 *Stanford Law Review* 957.

McCullagh C, 'A tie that binds: family and ideology in Ireland.' (1991) *Economic and Social review*, 22(3) 199-211.

Minister Simon Coveney, Dáil Éireann debate (Thursday, 18 May 2017) Residential Tenancies (Housing Emergency Measures in the Public Interest) (Amendment) Private Members Bill 2016: Second Stage Vol. 951 No. 2.

Norris, Gibbon and Curtain (1978) 'The Family in Context: The Stem Family in Ireland' 20(3) p429

Padraic Kenna 'Perspectives on the Irish Housing System' in *Housing Law, Rights and Policy* (Clarus Press 2011).

Padraic Kenna interview with Laoise Murray, dated Wed 23rd June 2021.

Peter Benson 'Philosophy of Property Law' in J Coleman & SJ. Shapiro, *The Oxford Handbook of Jurisprudence & Philosophy of Law* (OUP 2002) 752—757.

Peter Marcuse 'Abandonment Gentrification and Displacement'(1985) *Urban Law Journal*, Vol 28, 195

PJ Drudy and Michael Punch, 'Housing Models and Inequality: Perspectives on Recent Irish Experience' (2002) *Housing Studies*, Vol. 17, No. 4, 657–672

Revenue 'Marriage and Civil Partnerships: Joint Assessment' (April 2021).

Richard A. Posner, "The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication," (1980) *Hofstra Law Review* 487.

Ronan C. Lyons, "Housing Market: Supply, Pricing and Servicing Issues" in John O'Hagan and Francis O'Toole (eds), *The Economy of Ireland – Policy & Performance* (13th edn, Palgrave MacMillan 2017).

Stephen J. Schnably, 'Property and Pragmatism: A Critique of Radin's Theory of Property and Personhood' (1993) *Stanford Law Review* 45/347.

Tenant (Incremental) Purchase Scheme (April 2021).

The Housing Agency Press Release, 'Cost Rental Schemes Announced' (February 2021).

Wolfgang Forster 'Social Housing Policies in Vienna, Austria: A Contribution to Social Cohesion' (10 May 2013) *The New Tenement: Tradition and Modernity*.

9.6 NUMERICAL SOURCES

Society of Chartered Surveyors, Ireland 'The Real Costs of New Apartment Delivery' (January 2021)

Darren Hughes, 'Average House Price per County' (REA News 2021).

Department of Housing press release, '9.9% decrease in the number of households on social housing waiting list nationally' (9 March 2021).

Focus Ireland, 'Latest Figures on Homelessness in Ireland' (2021).

'The Daft.ie Rental Price Report' (2019 Q2).

CSO Household Finance and Consumption Survey 2018.

Eurostat Survey of House Price Index (2015 = 100) - Annual Data (PRC_HPI_A) 'Evolution of house prices and rents'.

The Residential Tenancies Board Rent Index.

Census of the Irish Population, 2016.

EU-SILC survey 'Average number of rooms per person by tenure status and dwelling type from 2003 onwards'.

CSO Geographical Profiles of Income in Ireland 2016.

Eurostat 'Marriage and Divorce Statistics' (updated 7 July 2021).

Census of the Irish Population, 2011.

CSO statistical release, 28 April 2020.

CSO, the Farm Structure Survey, 2016.

Property Industry Ireland, 'Estimating Ireland's Long-Run Housing Demand' (April 2019).

CSO Ireland 'Residential Property Price Index November 2020 – Additional Indicators'.