

ORIGINAL ARTICLE

# A response on the ‘old’ and ‘bold’ operation of gender at home

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## Abstract

This article is written as a response to Flora Renz’s ‘Gender (de)certification and the home: A new focus for feminist legal scholarship’? Renz’s paper offers a thought-provoking critique of the contemporary role of gender categories within the home. This response is inspired by Renz’s proposition that feminist legal scholarship has neglected the home as a site of gendered dynamics in regard to gender categories, and further that gender functions subtly and invisibly in the home. Drawing on a feminist legal analysis, this response offers an alternative premise that gender categories in the home operate explicitly and visibly, with material and ideological consequences for systemic inequalities.

## 1 | INTRODUCTION

Feminist legal scholarship has long been engaged with the interplay between the public and private spheres, revealing how patriarchal norms operate across both domains. Renz’s work builds on this tradition by focusing on the under-examined role of gender certification within private life. Drawing on the Future of Legal Gender project, Renz argues that gender certification perpetuates systemic inequalities but suggests that its significance in the home is less visible than in public contexts. This article critiques Renz’s analysis, recentring the material and ideological consequences of gender norms in private life and asserting that gender operates overtly and powerfully in the home, creating and perpetuating substantive structural inequalities.

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## 2 | GENDER OPERATIONS IN THE HOME

Renz's claim that the home is a 'missing puzzle piece' in contemporary debates about gender certification is important, but overstates the invisibility of gender dynamics in private life. As feminist scholars such as Boyd have demonstrated, the home is a critical site for the construction and reproduction of gendered inequalities.<sup>1</sup> MacKinnon's pivotal work examines the public/private divide and underscores the home as a critical site for the construction and reproduction of gendered inequalities.<sup>2</sup> Similarly, Diduck et al illustrate how assumptions about gender, sexual orientation, class and culture inform family law resulting in legal frameworks that are then used to reinforce hetero-sexist disparities.<sup>3</sup> In fact, early feminist scholars expressed frustration at the imperviousness of the public/private divide to feminist reform through mechanisms such as anti-discrimination legislation. Thornton credited this imperviousness to the immunity of the home as the primary site of inequality for women, coupled with the centrality of the dichotomised spheres in contemporary society.<sup>4</sup> While much progress has been made since this criticism, this article shortly demonstrates that the legacy of this dichotomy is enduring. Overall, numerous scholarly contributions underscore the significance of the home as a pivotal arena where gender norms and misnomers are constructed, performed, maintained and disseminated, with broader implications for societal structures and the public.

The meaning of home is also critical in exemplifying how gender operates therein. Desirable is an understanding of home that goes beyond 'four walls', beyond an enclosed space or even a private space. This would mean viewing home beyond the family setup as envisioned in most modern or global north setups, and catering also to the idea of wider kinship that is particularly relevant for more communal societies. The home has also been described as a political economy.<sup>5</sup> Manji, for instance, calls for a reimagining of the concept of home where she analyses the under-theorisation of the meaning of home both from physical and social reproductive perspective. Included in this reimagining of a 'just home' is a better understanding of the labour needed to reproduce home and its corresponding affective relationships.<sup>6</sup> Further, from an intersectional perspective, the meaning of home and its gendered dynamics are mediated by different and interacting social axes of power such as race, class, disability and sexuality. The variance in social positioning accordingly results in different levels of vulnerability, resilience and privilege. Recognising these varying meanings of home is essential for feminist legal scholarship to address the dynamics that intersect with the analysis of gender categories in order to meaningfully address systemic inequalities.

To illustrate this article's premise on the enduring and pervasive influence of gender within the home, two examples – gender stereotypes and social reproduction – are presented to highlight how gender categories function in domestic settings and their broader implications for public life.

<sup>1</sup> S. Boyd, *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (University of Toronto Press 1997).

<sup>2</sup> C. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (1987), ch. 8.

<sup>3</sup> A. Diduck and F. Kaganas, *Family Law, Gender and the State: Text, Cases and Materials* (2012, 3rd edn.).

<sup>4</sup> M. Thornton, 'The Public/Private Dichotomy: Gendered and Discriminatory' (1991) 18(4) *Journal of Law and Society* 448–463.

<sup>5</sup> K. Lynch, J. Baker, M. Lyons, S. Cantillon, J. Walsh, M. Feeley, N. Hanlon, and M. O'Brien, *Affective Equality: Love, Care and Injustice* (2009) as cited in A. Manji, 'Home in a Time of Covid' (2020) *Review of African Political Economy*, 47(166), 333.

<sup>6</sup> A. Manji, 'Home in a Time of Covid' (2020) *Review of African Political Economy*, 47(166), 333–343.

## 2.1 | Gender's oldest modality... stereotypes

Gender stereotypes, both hostile and benevolent, originate within the home and are reinforced in the private sphere. These stereotypes not only contribute to gendered inequalities in domestic settings but also reproduce heteronormative assumptions that marginalise LGBTQI+ identities. For example, caregiving is often normed as a female role, while leadership is associated with masculinity. These deeply ingrained notions shape dynamics in workplaces, public participation and other social structures, but they also presuppose traditional, binary family structures that exclude and delegitimise diverse sexual orientations and gender identities.<sup>7</sup> A striking illustration can be seen in the United Kingdom's national parliament, where women make up only 35% of representatives – a record high yet far from parity. Among the barriers to achieving greater representation is the historical norming of leadership as a male trait within the home, where men have traditionally been positioned as household heads.<sup>8</sup> This framing assumes and reinforces a heteronormative model of family life, in which men occupy public, decision-making roles, while women are confined to caregiving responsibilities.

The enduring influence of benevolent stereotypes is evident in legal frameworks such as the Irish Constitution, which states: 'In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved'.<sup>9</sup> The Constitution further declares that mothers should not be economically compelled to neglect their duties in the home. Provisions like these have a profound impact on social relations, perpetuating the idea that caregiving and social responsibility are inherently female roles.<sup>10</sup>

This framework is also intrinsically heteronormative, presuming a cisgender, heterosexual woman as the central caregiver and erasing LGBTQI+ family structures and dynamics. Such legal and cultural norms fail to account for caregiving roles that exist outside of traditional heterosexual partnerships, rendering the contributions of LGBTQI+ individuals invisible.<sup>11</sup> Moreover, the rigid association of caregiving with women and leadership with men reinforces exclusionary norms, denying LGBTQI+ individuals both legal recognition and cultural legitimacy in their chosen family roles.

By privileging heteronormative family models, these stereotypes and legal frameworks hinder progress towards broader equality. For LGBTQI+ rights, this poses a significant challenge, as the reinforcement of heteronormativity limits recognition and support for non-traditional family configurations, perpetuating inequality and exclusion in both private and public spheres.

## 2.2 | Social reproduction and what the COVID-19 pandemic visibilised

Social reproduction, deeply embedded within the home, operates as a critical mechanism through which gender categories are constructed and reinforced. Where care and social responsibility are

<sup>7</sup> See for example: K. O'Donovan, 'Family Law Matters' (1985) 3 *Feminist Legal Studies* 1.

<sup>8</sup> See further: A. H. Eagly and S. J. Karau, 'Role congruity theory of prejudice toward female leaders' (2002) 109 *Psychological Rev.* 573.

<sup>9</sup> Irish Constitution, Article 41(2)(1).

<sup>10</sup> See further: M. Enright, 'The Constitution of the Family: Property, Power, and the Normalisation of Heterosexuality' in *Northern/Irish Feminist Judgments: Judges' Troubles and the Gendered Politics of Identity*, eds M. Enright et al. (2015) 157–176.

<sup>11</sup> See further: N. D. Polikoff, *Beyond (Straight and Gay) Marriage: Valuing All Families under the Law* (2008).

normed as female, reproductive labour, caregiving and emotional labour often disproportionately fall to women, therefore perpetuating gendered divisions of labour. Norming in this way positions the home as the foundational site where gender stereotypes are enacted, with varying implications mediated by intersecting social axes of power such as race, sexuality, socio-economic status and disability.

The COVID-19 pandemic starkly illuminated how gender categories function within the home to exacerbate inequalities, as numerous studies have now revealed. One recent study explored the gendered paradox of ‘working from home’ arrangements that were at once helpful and harmful.<sup>12</sup> We learn that while flexibility held potential benefit for both mothers and fathers, it portended harm for women. Telework unintentionally reinforced traditional roles of women as caregivers while at the same time leading to a double invisibility of the woman’s workload. On the other hand, remote working arrangements favour(ed) men who reported they were able to work longer hours and had greater personal power and control; therefore, reinforcing the stereotype of the ideal worker as a (male) person that is always available for work.<sup>13</sup>

Research by the Women’s Higher Education Network found that female academics, particularly those with children, faced immense challenges balancing professional and domestic responsibilities. These women were more than three times as likely as their child-free counterparts to decline leadership opportunities during the pandemic, while women’s academic productivity decreased in contrast to men’s increased submissions to scholarly journals.<sup>14</sup> These trends reveal how the gendered construction of care as ‘female’ limits women’s opportunities in public and professional life, with roots firmly anchored in domestic expectations. Relatedly, the pandemic also disrupted the professional trajectories of women, underrepresented minorities and LGBTQI+ scientists in academic medicine, disproportionately with many dropping out or at risk of dropping out of academic research altogether.<sup>15</sup> This is owing to the additional burden of caregiving responsibilities at home, and further reflecting the substantive inequalities reinforced by traditional notions of gender and the home.

The operation of gender at the home further intersects with heteronormative assumptions that dominate notions of caregiving and social reproduction. The home is often framed as a space governed by cisgender, heterosexual family models, which marginalise LGBTQI+ individuals and their family structures. These norms erase the contributions of LGBTQI+ caregivers, reinforcing rigid binaries that fail to account for diverse experiences of care and family. Further evidence from WHEN Equality and the Fawcett Society shows that these burdens are disproportionately felt by women of colour, particularly those identifying as Black, Asian or minority ethnic. In many cases, these women bore the brunt of domestic and caregiving responsibilities, compounding vulnerabilities created by systemic racism and economic marginalisation.<sup>16</sup>

<sup>12</sup> M. Clar-Novak, ‘The gendered paradox of individualization in telework: Simultaneously helpful and harmful in the context of parenting’ (2025) 32 *Gender, Work & Organization* 330–350.

<sup>13</sup> *id.* On working hours and the ‘ideal worker’, see further: C. O’Hagan, ‘Broadening the Intersectional Path: Revealing Organizational Practices through ‘Working Mothers’ Narratives about Time’ (2018) 25 *Gender, Work & Organization* 443–458.

<sup>14</sup> P. B. Davis et al., ‘Pandemic-related barriers to the success of women in research: A framework for action’ (2022) 28 *Nature Medicine* 436.

<sup>15</sup> *id.*

<sup>16</sup> Fawcett Society and WHEN Equality, ‘Women and Work in a Pandemic: Findings and Challenges’ (2021) <<https://www.fawcettsociety.org.uk>>, last accessed 15 April 2025.

These domestic inequalities have enduring economic repercussions. A 2024 report by the Pensions and the Pensions Policy Institute revealed that women typically retire with £69,000 in pension savings, compared to £205,000 for men.<sup>17</sup> This stark gender pension gap means women would need to work 19 extra years to catch up, improbably so, and highlights how caregiving responsibilities and career interruptions limit women's economic independence and security, with systemic roots in the home's gendered division of labour.

The persistence of these inequalities underscores the power of gender categories to shape both private and public life. By framing care and social reproduction as inherently female responsibilities, the home becomes a site where gender norms are not only enacted but also transmitted to public and institutional contexts. These dynamics entrench economic disparities, limit professional opportunities and reinforce heteronormative models that marginalise diverse identities. Addressing the systemic inequities embedded in social reproduction requires dismantling the gendered assumptions that underpin the home, reimagining it as a space of equity and inclusion rather than one of stratification and exclusion.

### 3 | CONCLUSION

Renz's call for feminist legal scholarship to engage more deeply with the home as a site of gendered dynamics is both timely and necessary. However, this article argues that gender operates visibly and powerfully in the home, challenging the notion that its role is subtle or implicit.

In coming back briefly to gender decertification, which was Renz's main foundation, while the decertification discourse offers a provocative framework for rethinking the regulation of gender, its feminist implications must be carefully considered. While it may challenge some aspects of gender inequalities, it risks obfuscating or entrenching others, particularly those rooted in the socio-economic dynamics of the home. The insights feminist legal thought brings to the discourse are that, overall, by centring the material and ideological consequences of gender norms in private life, feminist analysis can advance a more nuanced understanding of the home as a critical site for legal and political engagement. This way, feminist legal scholars will ensure that the decertification discourse will not obscure structural inequalities, undermine affirmative action measures designed to address them, or erode state accountability for obligations arising out of gender-based violence and discrimination.

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<sup>17</sup> Pensions and Pensions Policy Institute, 'Gender Pension Gap Report' (2024) <<https://www.pensionspolicyinstitute.org.uk/>>, last accessed 15 April 2025.