
Enforcing Motherhood, Suppressing Fertility: Reproductive Justice, Colonial Legacies, and the Limits of International Human Rights Law

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Abstract

Reproduction has become a central site of public governance and political contestation, yet international human rights law's (IHRL) capacity to deliver substantive reproductive justice remains deeply ambivalent. While IHRL has progressively expanded the recognition of reproductive rights and developed increasingly sophisticated standards of state responsibility, feminist scholars have questioned its capacity to transform the structural conditions through which reproductive injustice is produced. This article argues that reproductive governance operates through structurally opposite but analytically symmetrical logics—the enforcement of reproduction in some populations and the suppression of fertility in others—and that these seemingly divergent practices are connected through broader projects of nation-building, demographic management and social ordering. Drawing on feminist international legal theory, reproductive justice scholarship and post-colonial feminist critique, the article develops this argument through a dialogical reading of abortion governance in postcolonial Ireland and coercive sterilisation during the Fujimori administration in Peru. Read together, these cases demonstrate that, although IHRL has proved increasingly effective at rendering reproductive harms legally cognisable and at securing accountability through legislative and institutional reform, its liberal, state-centric architecture remains principally oriented towards identifying rights violations rather than transforming the colonial, racial and institutional relations through which reproductive governance is constituted. The article concludes that substantive reproductive justice requires feminist engagement with the structural conditions that sustain reproductive injustice alongside, rather than instead of, rights-based legal reform.

Introduction

Reproduction has become a central site of public governance and political contestation, and women's reproductive lives are increasingly shaped by the interaction of legal, medical, and institutional regulation. While international human rights law (IHRL) has emerged as a key

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framework through which reproductive claims may be articulated as matters of dignity, equality, and bodily integrity, feminist scholars caution that rights-based approaches risk obscuring the structural conditions under which reproductive autonomy is exercised, and that legal reform may consolidate technocratic governance more readily than it secures justice.¹ As a result, reproductive harm has often remained legally invisible until it reaches the threshold of crisis.

This article argues that IHRL's limited capacity to advance reproductive justice reflects a structural characteristic of its liberal, state-centric architecture. It develops this argument through a dialogical reading of abortion governance in Ireland and coercive sterilisation in Fujimori-era Peru. Where Ireland enforced reproduction through the restriction of abortion, Peru sought to suppress the fertility of racialised and Indigenous women through coercive sterilisation. By bringing these into dialogue, the article demonstrates that, although IHRL has become increasingly effective at rendering reproductive harms legally visible, it remains structurally limited in its capacity to transform the colonial, racial and institutional relations through which those harms are produced.

Reproductive injustice is not only produced through formal legal prohibitions, but can also be identified at the intersection of law and healthcare systems, where access to reproductive care is highly mediated by clinical gatekeeping, distribution of resources, and institutional capacity. Crucially, the bureaucratic capacity to access care is unevenly distributed along intersecting lines of class, geography, and colonial power, so much so that legal access may coexist with material inaccessibility for rural, racialised and economically marginalised women. Morgan and Roberts conceptualise this as 'reproductive governance', through which law, healthcare systems and public policy are mobilised to differentially regulate reproduction, encouraging or constraining the fertility of particular populations according to state interests. As Rebouche notes, legal restrictions and regulatory burdens disproportionately affect rural and low-income women by concentrating services in urban centres, increasing travel distances, and imposing costs that function as de facto barriers to access. Consequently, attending to these sites of

¹ Cook RJ, 'Women's International Human Rights Law: The Way Forward' in Cook RJ (ed), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994); Romany C, 'State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights' in Cook RJ (ed), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994).

medical governance requires an intersectional analysis of how legal reform is mediated through health infrastructures that reproduce existing social hierarchies, consequently delimiting whose reproductive autonomy is practically realisable even within formal legal rights frameworks.

The article's primary contribution therefore lies in bringing two bodies of scholarship that are often treated separately into dialogue. Existing scholarship, while highly influential, has tended to analyse abortion and coercive sterilisation as distinct problems, frequently through single-jurisdiction case studies,² or to position the Global North as a site of relative rights consolidation against which southern deficits are measured.³ Yet, recent domestic legal developments have significantly destabilised the assumption that reproductive rights are securely embedded within the Global North. For example, the decision of the Supreme Court of the United States in *Dobbs v Jackson Women's Health Organization*⁴ overturned the constitutional protections previously recognised in *Roe v Wade*,⁵ enabling individual states to impose sweeping abortion bans. Similarly, in Poland, the 2020 ruling of the Polish Constitutional Tribunal⁶ effectively introduced a near-total prohibition on abortion by removing foetal impairment as a lawful ground for termination.⁷

Further developments in Latin America also demonstrate that reproductive rights progress cannot be understood as flowing unidirectionally from the Global North to the Global South. Across Latin America, feminist movements have advanced some of the most progressive and intersectional approaches to reproductive justice, challenging assumptions that rights innovation is centred within Northern liberal democracies.⁸ Argentina's Green Wave⁹ and

² See, for example: Smyth R, 'Abortion in International Human Rights Law: Missed Opportunities in *Manuela v El Salvador*' (2023) 32(2) *Feminist Legal Studies*, which offers a rigorous feminist critique of the IACtHR's engagement with abortion rights in El Salvador, but necessarily within a single-jurisdiction frame.

³ See, for example: Nandagiri R, Senderowicz L and Sigle W, 'Global Reproductive Justice: A New Agenda for Feminist Economics?' (2025) 31(1) *Feminist Economics* 1, for the tendency to position the Global North as a site of relative rights consolidation.

⁴ *Dobbs v Jackson Women's Health Organization* 597 US 215 (2022).

⁵ *Roe v Wade* 410 US 113 (1973).

⁶ *K 1/20* (Constitutional Tribunal of Poland, 22 October 2020).

⁷ See: Łętowska E, 'A Tragic Constitutional Court Judgment on Abortion' *Verfassungsblog* (12 November 2020) <https://verfassungsblog.de/a-tragic-constitutional-court-judgment-on-abortion/> accessed March 2026.

⁸ Díez J and Ruibal A, 'The Decriminalization of Abortion in Latin America: A Tale of Gradual Judicialization' (2025) 58 *PS: Political Science & Politics* 48; González Vélez AC, 'The Social Movement that Shifted the Debate on Abortion in Colombia' *LSE Latin America and Caribbean Blog* (7 April 2022) <https://blogs.lse.ac.uk/latamcaribbean/2022/04/07/the-social-movement-that-shifted-the-debate-on-abortion/> accessed July 2026.

⁹ Artazo G, Ramia A and Menoyo S, 'A New Feminist Ethic that Unites and Mobilizes People: The Participation of Young People in Argentina's Green Wave' (2021) 29(2–3) *Gender & Development* 335.

Colombia's Causa Justa¹⁰ movement exemplify how constitutional litigation, grassroots mobilisation and intersectional feminist organising have together reshaped abortion governance, framing reproductive rights as questions of democratic citizenship, structural equality and social justice rather than simply individual autonomy. These developments reinforce that reproductive governance cannot be understood through a simplistic Global North/Global South binary. Rather, both regression and innovation occur across jurisdictions, making a transnational dialogical reading better suited to understanding how reproductive governance is contested, reproduced and transformed across diverse political and historical contexts.

Reading Ireland and Peru alongside one another reveals that these practices are connected through broader structures of reproductive governance. This approach enables a more expansive assessment of both reproductive justice and the possibilities and limitations of IHRL. Furthermore, focusing on Ireland and Peru allows this article to both reject the North/South differentiation, and analyse different types of reproductive governance. In Ireland, reproductive governance was constitutive of postcolonial state-building itself. Catholic moral authority functioned not merely as a cultural influence but as the institutional architecture through which a distinctly Irish national identity was consolidated in differentiation from the secular colonial metropole, and women's reproductive capacity became the symbolic terrain on which that differentiation was enacted.¹¹ As will be further addressed in the following sections, Irish feminist scholarship has long argued that abortion regulation was not simply an expression of religious conservatism but a constitutive feature of postcolonial state-building itself.

On the other hand, reproductive governance in Peru was shaped by colonial hierarchies that positioned Indigenous populations as objects of demographic management. Rousseau demonstrates that reproductive health policy became embedded within a targeted poverty-reduction paradigm in which fertility reduction, maternal mortality and population

¹⁰ González Vélez AC, Melo-Arévalo C and Martínez-Londoño J, 'Eliminating Abortion from Criminal Law in Colombia: A Just Cause' (2019) 21(2) *Health and Human Rights Journal* 221.

¹¹ See Scanlon LA and Kumar MS, 'Ireland and Irishness: The Contextuality of Postcolonial Identity' (2019) 109(1) *Annals of the American Association of Geographers* 202; Girvin B, 'An Irish Solution to an Irish Problem: Catholicism, Contraception and Change, 1922–1979' (2018) 27(1) *Contemporary European History* 1; Delay C, 'Gender, Sexuality, and the Devotional Revolution in Ireland' (2020) 24(4) *New Hibernia Review / Iris Éireannach Nua* 98; Smyth L, *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland* (Ashgate 2005); Fletcher R, 'Reproducing Irishness: Race, Gender, and Abortion Law' (2005) 17 *Canadian Journal of Women and the Law* 365.

management were treated as central objectives of national development.¹² Rather than pursuing reproductive rights as an end in themselves, state programmes conceptualised family planning as an instrument for reducing poverty and regulating the reproductive behaviour of populations identified as posing a ‘high reproductive risk’,¹³ particularly poor rural women. As will be discussed, population policies implemented during the Fujimori administration¹⁴ disproportionately targeted Indigenous and rural women for sterilisation, reproducing longstanding racialised assumptions about ‘excessive’ fertility among marginalised communities.

These specific case studies, and specific types of reproductive issues, have been chosen to highlight that even vastly opposing measures can be used to achieve the same end. Although these policies pursued opposite reproductive outcomes, both positioned women’s reproductive capacities as methods of state planning. This choice should not be understood as suggesting that abortion represents the sole or even principal manifestation of reproductive injustice within Ireland. Irish feminist scholarship has demonstrated that reproductive governance also operated through institutions including the Magdalene Laundries,¹⁵ Mother and Baby Homes,¹⁶ the coercive regulation of unmarried mothers,¹⁷ bans on contraception¹⁸ and ongoing practices and harms of symphysiotomies.¹⁹ Likewise, Peru has experienced broader reproductive injustices including restrictive abortion laws²⁰ and unequal maternal healthcare.²¹ The criminalisation of abortion and forced sterilisation are thus selected not because they exhaust either country’s reproductive history, but because they represent contrasting forms of state reproductive

¹² Rousseau S, ‘The Politics of Reproductive Health in Peru: Gender and Social Policy in the Global South’ (2007) 14(1) *Social Politics: International Studies in Gender, State & Society* 93, 101.

¹³ Ibid, 106.

¹⁴ Stavig LI, ‘Unwittingly Agreed: Fujimori, Neoliberal Governmentality, and the Inclusive Exclusion of Indigenous Women’ (2022) 17(1) *Latin American and Caribbean Ethnic Studies* 34.

¹⁵ McGettrick C, O’Donnell K, Steed M, Smith JM and O’Rourke M, *Ireland and the Magdalene Laundries* (IB Tauris 2021).

¹⁶ Garrett PM, ‘“Unmarried Mothers” in the Republic of Ireland’ (2016) 16 *Journal of Social Work* 708.

¹⁷ Enright M et al., ‘Mother and Baby Homes Commission of Investigation Report: Alternative Executive Summary’ (2025) 14(1) *feminists@law*.

¹⁸ Enright M and Cloatre E, ‘Transformative Illegality: How Condoms “Became Legal” in Ireland, 1991–1993’ (2018) 26(3) *Feminist Legal Studies* 261; Cloatre E and Enright M, ‘“On the Perimeter of the Lawful”: Enduring Illegality in the Irish Family Planning Movement, 1972–1985’ (2017) 44(4) *Journal of Law and Society* 471.

¹⁹ Walsh O, *Final Report on Symphysiotomy in Ireland, 1944–1984* (Department of Health 2014); Shaarani SR, van Eeden W and O’Byrne JM, ‘The Irish Experience of Symphysiotomy: 40 Years Onwards’ (2016) 36(1) *Journal of Obstetrics and Gynaecology* 48.

²⁰ Duffy DN, Freeman C and Rodríguez Castañeda S, ‘Beyond the State: Abortion Care Activism in Peru’ (2023) 48 *Signs: Journal of Women in Culture and Society* 609.

²¹ Rousseau (n 12).

governance that permit analysis of how apparently opposite reproductive policies may reproduce common structural logics.

Crucially, these case studies reveal that reproductive injustice is produced not merely through restriction or expansion of formal rights, but through the differential regulation of whose reproduction is valued, encouraged, or constrained—a dynamic that IHRL’s liberal architecture, oriented as it is towards formal legality and state compliance, is structurally ill-equipped to address. Colen conceptualises this dynamic as ‘stratified reproduction’, through which reproductive labour and reproductive capacities are ‘differentially experienced, valued, and rewarded according to inequalities of access to material and social resources’.²² This is further structured by class, race, gender, migration status and broader political and economic forces. Rather than governing reproduction uniformly, states differentially assign reproductive value, fostering the reproduction of some populations while constraining that of others.

Read through this lens, Ireland’s abortion regime and Peru’s sterilisation programme do not represent opposing reproductive projects but opposite expressions of the same stratified logic: the former privileged the reproduction of women positioned as central to the postcolonial nation, while the latter sought to suppress the fertility of Indigenous women whose reproduction was constructed as incompatible with projects of national development. These policies did not simply reflect technocratic failures but reproduced longstanding colonial distinctions between populations whose reproduction was to be fostered and those whose fertility was to be managed. As Ross and Solinger argue, reproductive justice emerged precisely because reproductive oppression has historically operated through both the denial of the right not to have children and the denial of the right to have and raise children with dignity.²³ Reproductive justice therefore rejects an exclusive focus on individual choice, insisting instead that reproductive freedom depends upon the material, political and social conditions within which reproductive decisions are made.²⁴ Ross and Solinger’s genealogy is rooted in the organising of women of colour, which understood contemporary reproductive abuses—including coercive sterilisation, restrictions on abortion, welfare policies and the policing of

²² Colen S, ‘“Like a Mother to Them”: Stratified Reproduction and West Indian Childcare Workers and Employers in New York’ in Ginsburg FD and Rapp R (eds), *Conceiving the New World Order: The Global Politics of Reproduction* (University of California Press 1995), 78.

²³ Ross LJ and Solinger R, *Reproductive Justice: An Introduction* (University of California Press 2017), 9.

²⁴ *Ibid.*

motherhood—as the continuing legacies of slavery, colonialism and racial capitalism rather than isolated legal wrongs.²⁵

The article develops this argument across four sections. The first examines the theoretical framework, situating procreative liberty and rights-based approaches within feminist and postcolonial critiques of IHRL's capacity for structural transformation. The second and third sections develop the case studies. Ireland's abortion regime is analysed as a structural feature of postcolonial state-building, with particular attention to the persistence of reproductive governance through clinical gatekeeping in the wake of partial decriminalisation. Peru's sterilisation programme is examined as a contemporary expression of colonial demographic governance in which reproductive coercion was embedded within state development policy. The fourth section brings the case studies into dialogue to examine why IHRL operated differently across these contexts while revealing a common structural limitation: although increasingly effective at identifying and remedying reproductive rights violations, it remains comparatively less equipped to transform the colonial, institutional and racial relations through which reproductive governance is reproduced. The conclusion reflects on what these findings reveal about the possibilities and limits of IHRL and the implications for feminist engagement with international human rights mechanisms.

Human Rights and Reproductive Justice

The concept of procreative liberty has emerged as a central normative justification for reproductive rights, grounded in the principle that individuals possess authority over their own bodies and reproductive lives.²⁶ As Thomson argued, 'if a human being has any just prior claim to anything at all, he has a just prior claim to his own body'.²⁷ On this account, decisions concerning contraception or abortion derive from bodily autonomy and freedom from state interference. While this liberal conception has been central to the development of reproductive rights,²⁸ feminist scholars have questioned whether an emphasis on individual autonomy alone

²⁵ Ibid, 12-14.

²⁶ Robertson JA, 'Procreative Liberty and the Control of Conception, Pregnancy, and Childbirth' (1983) 69(3) *Virginia Law Review* 405.

²⁷ Thomson J, 'A Defence of Abortion' in Rachels J (ed), *Moral Problems* (Harper & Row 1975), 95.

²⁸ Rebouché R, 'Reproducing Rights: The Intersection of Reproductive Justice and Human Rights' (2017) 7 *UC Irvine Law Review* 579, 589–90.

can adequately explain how reproductive power is exercised through broader social, political and colonial structures.²⁹

Feminist international legal scholarship has consistently argued that these liberal assumptions constrain the transformative potential of IHRL. The public/private divide has historically relegated harms disproportionately experienced by women—including reproductive coercion, denial of healthcare and gender-based violence—to spaces regarded as beyond the proper concern of international law.³⁰ As Charlesworth observes, ostensibly universal rights frameworks privilege abstract legal equality while obscuring the gendered power relations that determine whose claims become legally intelligible.³¹ Extending this critique beyond gender, Kapur argues that rights discourse frequently individualises structural inequalities, translating political struggles into claims for legal recognition while leaving colonial and economic relations largely intact.³² Likewise, Otto³³ and Merry³⁴ demonstrate that the institutionalisation of human rights often privileges bureaucratic compliance over structural transformation, while Cook³⁵ identifies a longstanding reluctance within traditional human rights discourse to recognise violations of women's rights. Collectively, these critiques suggest that reproductive injustice cannot be understood simply as a question of individual choice or legal access, but as a structural condition reproduced through law, access to healthcare, and public policy.

These critiques should not be understood as suggesting that IHRL has failed to develop robust reproductive rights standards. On the contrary, the Cairo³⁶ and Beijing³⁷ Conferences marked

²⁹ Greenhalgh S, *Situating Fertility: Anthropology and Demographic Inquiry* (Cambridge University Press 1995); Davis K, 'Reclaiming Women's Bodies: Colonialist Trope or Critical Epistemology?' (2007) 55 *The Sociological Review* 50.

³⁰ Charlesworth H, Chinkin C and Wright S, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613.

³¹ Charlesworth H, 'Feminist Methods in International Law' (1999) 93(2) *American Journal of International Law* 379.

³² Kapur R, 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics' (2002) 15 *Harvard Human Rights Journal* 1.

³³ Otto D, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade' (2009) 10(1) *Melbourne Journal of International Law* 11.

³⁴ Merry SE, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2006).

³⁵ Cook (n 1), 3.

³⁶ United Nations Population Fund, *Report of the International Conference on Population and Development, Cairo, 5–13 September 1994*, UN Doc A/CONF.171/13/Rev.1 (1994) https://www.unfpa.org/sites/default/files/resource-pdf/94-09-04_Cairo_Declaration_on_Population_Development_ICPPD.pdf accessed August 2020.

³⁷ United Nations, *Beijing Declaration and Platform for Action*, adopted at the Fourth World Conference on Women, Beijing, 15 September 1995 (1995)

a significant shift by establishing reproductive health and reproductive rights as matters of international human rights concern, while United Nations treaty monitoring bodies have progressively interpreted existing human rights treaties to encompass reproductive autonomy through individual communications, General Recommendations, Concluding Observations and state reporting procedures.³⁸ As Coomaraswamy observes, however, the incorporation of reproductive rights into international governance also embedded them within state-centred and developmentalist frameworks, illustrating how rights may simultaneously empower women and facilitate new forms of reproductive governance.³⁹ The argument advanced here is therefore not that IHRL lacks normative sophistication or accountability mechanisms. Rather, its institutional architecture remains principally directed towards identifying and remedying rights violations through legal compliance. As the case studies will demonstrate, IHRL has become increasingly effective at recognising reproductive harms and securing accountability, yet remains comparatively less equipped to transform the political, colonial and institutional relations through which reproductive governance is constituted.

Abortion and Reproductive Justice in the Republic of Ireland

While the criminalisation of abortion originated in the colonial legal framework inherited from Britain, its persistence after Irish independence became a distinctive feature of Irish reproductive governance. The continued operation of sections 58 and 59 of the Offences Against the Person Act 1861 in Ireland entrenched one of the most restrictive abortion regimes in Europe. Irish feminist scholarship has consistently situated Ireland's restrictive abortion regime within the state's distinctive political, religious, and constitutional dynamics, demonstrating how Catholic moral authority, postcolonial constitutional identity, and gendered constructions of national belonging converged to produce a regime of abortion exceptionalism that subordinated women's reproductive autonomy to communal moral governance.⁴⁰

https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf accessed August 2020.

³⁸ See, for example: Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Ireland*, UN Doc CCPR/C/IRL/CO/4 (2014); Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, UN Doc CAT/C/IRL/CO/2 (2017); Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland*, UN Doc CEDAW/C/IRL/CO/6-7 (2017).

³⁹ Coomaraswamy R, 'Reinventing International Law: Women's Rights as Human Rights' (1997) 23 *Commonwealth Law Bulletin* 1243.

⁴⁰ See, for example: Fletcher R, 'Reproducing Irishness' (2001) 28 *Journal of Law and Society* 414; Galligan Y, *Women and Politics in Contemporary Ireland: From the Margins to the Mainstream* (Pinter 1998).

For example, the Pro Life Amendment Campaign⁴¹ culminated in the adoption of the Eighth Amendment in 1983,⁴² which recognised the right to life of the unborn as equal to that of the woman. Reflecting the campaign's Catholic moral vision,⁴³ the Amendment reinforced a constitutional order that, since 1937, had been shaped by Catholic social teaching through its provisions on the family, motherhood and the privileged constitutional recognition of the Catholic Church.⁴⁴ Enright contends that the Eighth Amendment cannot be understood merely as a prohibition on abortion but as part of a broader political project in which women's reproductive capacity became central to the production of national identity.⁴⁵ She demonstrates that Irish law historically constructed women as mothers for the nation, reflecting the convergence of Catholic ideology, constitutionalism and nationalist conceptions of womanhood.⁴⁶ Moreover, the abortion reform represented legislative challenge *and* a challenge to the postcolonial constitutional identity of the Irish state itself, rendering the reform process, as Taylor, Spillane and Arulkumaran observe, 'lengthy, complex and difficult'.⁴⁷ Adopted by a 67 per cent majority, Article 40.3.3 provided that 'the State acknowledges the right to life of the unborn, and with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right'.⁴⁸ By constitutionalising abortion rather than regulating it through ordinary legislation, the State transformed abortion from a question of healthcare into a matter of constitutional morality and postcolonial national identity.⁴⁹

In this account, abortion law did not simply regulate reproduction; it actively participated in producing Irish identity by positioning women as the biological and moral reproducers of the postcolonial state. Abortion law formed one component of a broader architecture of reproductive governance through which the postcolonial Irish state constructed an ideal form of citizenship rooted in Catholic understandings of family, sexuality and motherhood.

⁴¹ Lentin R, 'A Woman Died: Abortion and the Politics of Birth in Ireland' (2013) 105 *Feminist Review* 5.

⁴² Constitution of Ireland 1937, art 40.3.3 (inserted by the Eighth Amendment of the Constitution Act 1983).

⁴³ Kingston J and Whelan A, *Abortion and the Law* (Roundhall Sweet & Maxwell 1997).

⁴⁴ Whyte JH, *Church and State in Modern Ireland, 1923–1979* (Gill and Macmillan 1980); Enright M, 'Abortion Law in Ireland: Reflecting on Reform' in Black L and Dunne P (eds), *Law and Gender in Modern Ireland: Critique and Reform* (Hart Publishing 2019).

⁴⁵ Enright M, *ibid.*

⁴⁶ *Ibid.*

⁴⁷ Taylor M, Spillane A and Arulkumaran S, 'The Irish Journey: Removing the Shackles of Abortion Restrictions in Ireland' (2020) 62 *Best Practice & Research Clinical Obstetrics & Gynaecology* 37.

⁴⁸ Constitution of Ireland 1937, art 40.3.3 (n 42).

⁴⁹ Taylor et al. (n 47), 38.

Alongside institutions such as Mother and Baby Homes and Magdalene Laundries, it helped produce a vision of the nation in which women's reproductive and sexual lives were regulated in service of national identity, perpetuating colonial structures through a gendered project of state-building.⁵⁰ As de Londras and Enright argue, the Eighth Amendment was not an inevitable constitutional development but a deliberate intervention designed to entrench a particular moral vision of pregnancy and prevent the evolution of constitutional rights in response to changing social values.⁵¹ By according the foetus independent constitutional status while reducing pregnant women to the constitutional category of 'mother', the Amendment embedded reproductive governance within the constitutional architecture of the state.⁵²

Fletcher extends this analysis by arguing that anti-abortion politics constructed an authentic Irishness in explicit opposition to a perceived British 'pro-choice' culture, making the regulation of reproduction central to the production of national identity rather than merely an expression of pre-existing moral commitments.⁵³ Similarly, Fischer demonstrates that the Irish nation was imagined as a morally exceptional space whose integrity depended upon regulating, containing and, where necessary, displacing women whose reproductive choices threatened this national imaginary.⁵⁴ Through practices including institutional confinement, stigma and abortion travel, reproductive governance became a mechanism through which Irish sovereignty and moral distinctiveness were materially enacted.⁵⁵ These dynamics were themselves rooted in Ireland's postcolonial formation. As Scanlon and Kumar argue, the close association between Catholicism and Irish national identity emerged as a consequence of colonial trauma, through which postcolonial recovery was pursued by constructing a national identity distinct from the British metropole.⁵⁶ Catholicism consequently became the institutional and moral

⁵⁰ See: Smith J, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (University of Notre Dame Press 2007); Enright M, "'Up with the Brave': Gender, Transgression and Judges' Use of Catholic Convents in England and Ireland, 1930–1959" (2024) *Law and History Review* (forthcoming); Khaleeli H, 'Symphysiotomy – Ireland's Brutal Alternative to Caesareans' *The Guardian* (12 December 2014) <https://www.theguardian.com/lifeandstyle/2014/dec/12/symphysiotomy-irelands-brutal-alternative-to-caesareans> accessed September 2026.

⁵¹ De Londras F and Enright M, *Repealing the 8th: Reforming Irish Abortion Law* (Policy Press 2018); see in particular: Chapter 1: The Case for Repealing the 8th.

⁵² *Ibid*, 2.

⁵³ Fletcher (n 11), 380–81.

⁵⁴ Fischer C, 'Abortion and Reproduction in Ireland: Shame, Nation-Building and the Affective Politics of Place' (2019) 122 *Feminist Review* 32, 32–48.

⁵⁵ *Ibid*, 33.

⁵⁶ Scanlon LA and Kumar MS, 'Ireland and Irishness: The Contextuality of Postcolonial Identity' (2019) 109(1) *Annals of the American Association of Geographers* 202.

framework through which this identity was consolidated, rendering abortion regulation a proxy for wider struggles over sovereignty, morality and national belonging.⁵⁷

The constitutional prohibition compelled large numbers of women to travel abroad for abortion, with an estimated 171,795 women travelling to Britain between 1980 and 2017.⁵⁸ This reliance on mobility became a central mechanism of reproductive governance. Although often presented politically as a pragmatic solution, feminist scholars have shown that abortion travel produced highly stratified access to care, disproportionately burdening women with limited financial resources, caring responsibilities or precarious immigration status.⁵⁹ By externalising reproductive healthcare, the State transformed abortion into a matter of individual resilience rather than collective responsibility, obscuring its own role in producing reproductive injustice.

Early European and domestic jurisprudence reflected a cautious approach to Ireland's abortion regime. In *S.P.U.C. v Grogan*,⁶⁰ the European Court of Justice recognised abortion services as falling within the scope of EU law, yet afforded Ireland a wide margin of appreciation in restricting access to abortion-related information.⁶¹ Similarly, in *Attorney General v X*,⁶² the Irish Supreme Court recognised a narrowly defined constitutional entitlement to abortion where there was a real and substantial risk to the woman's life. However, the State's failure to legislate for the *X* decision generated profound legal uncertainty, producing a chilling effect within the medical profession and reinforcing a highly risk-averse approach to abortion care. The consequences of this uncertainty became tragically apparent in the death of Savita Halappanavar.⁶³ Despite the non-viability of her pregnancy, an abortion was refused because her life was not considered to be at immediate risk, and she subsequently died from sepsis after reportedly being informed that a termination could not be performed because Ireland was a

⁵⁷ White TJ, 'Catholicism and Nationalism in Ireland: From Fusion in the 19th Century to Separation in the 21st Century' (2007) 4(1) *Westminster Papers in Communication and Culture* 47.

⁵⁸ Taylor et al. (n 47), 38.

⁵⁹ Enright M et al., 'Abortion Law Reform in Ireland: A Model for Change' (2015) 5(1) *feminists@law*; Fletcher (n 40).

⁶⁰ *Society for the Protection of Unborn Children (Ireland) Ltd v Grogan* (Case C-159/90) [1991] ECR I-4685.

⁶¹ Although the European Court of Justice recognised lawful abortion as a protected cross-border service, it held that the unions' independent distribution of information lacked the necessary economic connection to that service, placing the dispute outside the scope of EU free movement law and allowing Ireland's domestic abortion restrictions to remain unaffected by EU law in that case; see: para 22-27, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61990CJ0159> accessed July 2026.

⁶² *Attorney General v X* (1992) 1 IR 1, 57–58.

⁶³ Taylor et al. (n 47).

‘Catholic country’.⁶⁴ Her death exposed the practical consequences of constitutional ambiguity and intensified both domestic and international scrutiny of Ireland’s abortion laws.

At the international level, human rights bodies increasingly reframed Ireland’s abortion regime as incompatible with women’s rights to dignity, privacy and bodily autonomy. In *Open Door Counselling and Dublin Well Woman v Ireland*,⁶⁵ the European Court of Human Rights held that restrictions on abortion-related information violated Article 10 (freedom of expression) of the Convention, emphasising the concrete risks that enforced ignorance posed to women’s health. This reasoning developed further in *A, B and C v Ireland*,⁶⁶ where the Court confirmed that abortion decisions fell within the scope of Article 8 (private and family life) while declining to recognise a substantive right to abortion. Although these judgments represented important doctrinal advances, they largely preserved a model of incremental legal accommodation rather than requiring structural reform. This increasingly prompted United Nations treaty monitoring bodies, including CEDAW⁶⁷ and the Human Rights Committee,⁶⁸ to characterise Ireland’s abortion regime as incompatible with international human rights standards.

The Human Rights Committee’s decision in *Mellet v Ireland* (2016)⁶⁹ exemplifies this doctrinal development. In *Mellet*, the Committee held that requiring a woman carrying a foetus diagnosed with a fatal abnormality to travel abroad for abortion constituted cruel, inhuman and degrading treatment, and an arbitrary interference with privacy and discrimination under the ICCPR.⁷⁰ The committee recommended compensation, legislative reform and measures to prevent similar violations. Fiona de Londras argues that *Mellet* demonstrated the incompatibility of Ireland’s constitutional framework with IHRL and signalled the need for a comprehensive reconsideration of Irish abortion law extending beyond cases of fatal foetal

⁶⁴ Calkin S and Kaminska ME, ‘Persistence and Change in Morality Policy: The Role of the Catholic Church in the Politics of Abortion in Ireland and Poland’ (2020) 124 *Feminist Review* 86, 91.

⁶⁵ *Open Door and Dublin Well Woman v Ireland*, App nos 14234/88 and 14235/88 (1993) 15 EHRR 244.

⁶⁶ *A, B and C v Ireland* (2010) App no 25579/05, European Court of Human Rights, 16 December 2010.

⁶⁷ Human Rights Committee, *Concluding Observations on the Third Periodic Report of Ireland*, UN Doc CCPR/C/IRL/CO/3 (2008) <https://digitallibrary.un.org/record/633440?v=pdf> accessed March 2026.

⁶⁸ *Ibid.*

⁶⁹ Human Rights Committee, *Mellet v Ireland*, Communication No 2324/2013, UN Doc CCPR/C/116/D/2324/2013 (31 March 2016).

⁷⁰ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

abnormality.⁷¹ Indeed, she contends that the harms identified by the Committee—including forced travel, financial burden, stigma, disruption of medical care and the denial of post-abortion support—were not unique to fatal foetal abnormality but reflected the routine experiences of women compelled to seek abortions outside Ireland under the Eighth Amendment.⁷² The significance of *Mellet* therefore lies in illustrating the capacity of IHRL to articulate increasingly sophisticated standards of state responsibility and to require legislative and institutional reform. As Carnegie and Roth observe, these decisions, together with sustained engagement by UN treaty monitoring bodies, exposed the incompatibility of Ireland's abortion regime with international human rights standards and became an important source of pressure for constitutional reform.⁷³

This evolving position extended beyond the Human Rights Committee. Through General Recommendation No. 24, CEDAW recognised access to reproductive healthcare as an essential component of women's right to health and affirmed States' positive obligations to remove discriminatory barriers, including laws criminalising procedures required only by women.⁷⁴ General Recommendation No. 35⁷⁵ further identified the criminalisation of abortion, denial or delay of safe abortion and forced continuation of pregnancy as forms of gender-based violence that may amount to torture or cruel, inhuman or degrading treatment, expressly citing *Mellet*.⁷⁶ CEDAW's 2017 Concluding Observations likewise recommended repeal of the Eighth Amendment.⁷⁷ Collectively, these developments illustrate how UN treaty bodies progressively reconceptualised reproductive autonomy through human right principles of equality, dignity, bodily integrity and substantive state responsibility.

The interventions of UN treaty bodies played an important role in Ireland's constitutional transformation. Rather than compelling legal reform through binding enforcement, decisions such as *Mellet*, together with repeated recommendations from CEDAW and other treaty bodies,

⁷¹ De Londras F, 'Fatal Foetal Abnormality, Irish Constitutional Law, and *Mellet v Ireland*' (2016) 24 *Medical Law Review*.

⁷² *Ibid*, 595-596.

⁷³ Carnegie A and Roth R, 'From the Grassroots to the Oireachtas: Abortion Law Reform in the Republic of Ireland' (2019) 21 *Health and Human Rights Journal* 109.

⁷⁴ Committee on the Elimination of Discrimination against Women, *General Recommendation No 24: Article 12 of the Convention (Women and Health)*, UN Doc A/54/38/Rev.1 (1999)

⁷⁵ Committee on the Elimination of Discrimination against Women, *General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19*, UN Doc CEDAW/C/GC/35 (2017).

⁷⁶ Human Rights Committee, *Mellet v Ireland* (n 69).

⁷⁷ Committee on the Elimination of Discrimination against Women (n 38).

provided authoritative international recognition that Ireland's abortion regime was incompatible with contemporary human rights standards. Carnegie and Roth, for example, argue that reproductive rights activists strategically leveraged international human rights mechanisms alongside grassroots organising, coalition-building and anti-stigma campaigning, illustrating that international human rights interventions became politically influential only when translated into sustained domestic advocacy.⁷⁸

These interventions subsequently informed the political context within which the Citizens' Assembly deliberated on constitutional reform in 2016.⁷⁹ Following its deliberations, the Citizens' Assembly voted overwhelmingly to recommend the repeal of the Eighth Amendment and emphasised the need to trust women as autonomous moral agents.⁸⁰ This recommendation subsequently informed the process of constitutional reform, culminating in the 2018 referendum in which the electorate voted to repeal the Eighth Amendment.⁸¹ The partial decriminalisation of abortion in Ireland following the enactment of the Health (Regulation of Termination of Pregnancy) Act 2018 represented a profound legal shift, dismantling the constitutional prohibition on abortion and bringing domestic law closer into alignment with international human rights standards.⁸² However, the repeal did not establish a constitutional right to abortion. Rather, by replacing the Eighth Amendment with a permissive legislative power, the constitutional settlement left the scope of abortion access to ordinary legislation, giving rise to continuing contestation over the constitutional protection afforded to pregnant women's rights. As Enright argues, the post-2018 constitutional framework remains unsettled, with access to abortion continuing to depend upon the restrictive grounds and criminal provisions of the 2018 Act rather than on an independently recognised constitutional right.⁸³

⁷⁸ Carnegie and Roth (n 73), 112–16.

⁷⁹ Laffoy M, *First Reports and Recommendations of the Citizens Assembly: The Eighth Amendment of the Constitution* (29th June 2017), ptfs-oireachtas.s3.amazonaws.com/DriveH/AWDData/Library3/CAdocId290617A_110031.pdf accessed March 2026

⁸⁰ Taylor et al. (n 47), 41.

⁸¹ McDonald H, Graham-Harrison E and Baker S, 'Ireland Votes by Landslide to Legalise Abortion' *The Guardian* (27 May 2018) <https://www.theguardian.com/world/2018/may/26/ireland-votes-by-landslide-to-legalise-abortion> accessed September 2026.

⁸² Health (Regulation of Termination of Pregnancy) Act 2018, s 23.

⁸³ Enright M, 'Abortion and Constitutional Rights Since 2018: Assessing the Health (Regulation of Termination of Pregnancy) Act' (2024) 43(2) *Dublin University Law Journal*.

Feminist analyses therefore caution against interpreting decriminalisation as the culmination of reproductive justice struggles.⁸⁴

Following partial decriminalisation, medical professionals in Ireland still function as bureaucratic gatekeepers of reproductive governance, mediating access through clinical discretion, institutional risk management, and commissioning structures rather than simply implementing legal entitlements.⁸⁵ State regulation of reproductive healthcare therefore entrenches inequalities through healthcare systems, with hospitals and clinics operating as sites where legal norms are refracted through institutional cultures, resource constraints, and professional hierarchies.⁸⁶ Regulation of providers and service delivery structures thereby intensifies moral governance at the point of care, positioning healthcare institutions not as neutral conduits of legal rights, but as arenas of moral and regulatory contestation through which abortion access is differentially shaped and constrained.⁸⁷ As Rebouché notes, a right to abortion ‘means very little if women cannot obtain or afford healthcare’,⁸⁸ highlighting the disjunction between formal legal recognition and material access. The partial decriminalisation thus emerges as a necessary but incomplete step, highlighting the distinction between formal legal change and substantive justice. While the removal of criminal sanctions reduced the immediate threat of punishment, ongoing uncertainty in service provision continues to shape women’s reproductive experiences.

Most significantly, this reveals that reproductive governance has not dissolved but only migrated from constitutional prohibition to clinical gatekeeping, from criminal sanction to institutional discretion. This shift exposes a structural feature of IHRL as a framework oriented toward formal legality, capable of dismantling criminal prohibition while remaining structurally ill-equipped to compel the material and institutional transformations that

⁸⁴ Sheldon S, ‘The Decriminalisation of Abortion: An Argument for Modernisation’ (2016) 36(2) *Oxford Journal of Legal Studies* 334; Fletcher R, ‘Peripheral Governance: Administering Transnational Health-Care Flows’ (2013) 22(2) *Social & Legal Studies* 199; Erdman JN, ‘The Politics of Global Abortion Rights’ (2016) 44(4) *Politics & Society* 481.

⁸⁵ Duffy D et al., ‘Information Flow as Reproductive Governance: Patient Journey Analysis of Information Barriers and Facilitators to Abortion Care in the Republic of Ireland’ (2022) 19 *SSM – Population Health* 101199.

⁸⁶ Whelan R, ‘Aggravating Inequalities: State Regulation of Abortion and Contraception’ (2023) 46(1) *Harvard Journal of Law & Gender* 1.

⁸⁷ Ibid, 138.

⁸⁸ Rebouché (n 28), 580.

substantive reproductive justice demands. The consultation room, it turns out, is as much a site of reproductive governance as the Constitution ever was.

Yet Ireland also raises a broader question about the operation of reproductive governance beyond the context of abortion regulation. If reproductive governance can persist despite the partial dismantling of formal legal prohibitions, how might similar dynamics emerge in contexts where state intervention is directed not towards enforcing motherhood but towards suppressing it? The Peruvian sterilisation programme discussed in the following section provides a useful site through which to explore this question. While the forms of intervention differ profoundly, placing these contexts in dialogue reveals how reproductive governance may operate through opposite reproductive imperatives while remaining embedded within broader structures of institutional power, social hierarchy, and state regulation.

Coercive Sterilisation and Reproductive Justice in Peru

Access to contraception is widely recognised within IHRL as integral to women's rights to health, bodily autonomy and equality.⁸⁹ Unlike abortion, contraception has often been presented as a relatively uncontroversial component of reproductive healthcare, particularly within development and public health agendas. Feminist scholars, however, have demonstrated that contraceptive provision has frequently been embedded within population control programmes that prioritise demographic management over women's reproductive self-determination.⁹⁰ In Latin America, the expansion of family planning was often pursued through technocratic state interventions in which fertility regulation served broader objectives of development, modernisation and political stability rather than reproductive autonomy. Contraception therefore occupies an ambivalent position within human rights law: it may expand reproductive autonomy while simultaneously providing a vehicle for coercive state intervention and prohibition, particularly where reproductive decision-making is shaped by poverty, racialisation and unequal access to healthcare.⁹¹

⁸⁹ *Convention on the Elimination of All Forms of Discrimination against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16(1).

⁹⁰ Hartmann B, *Reproductive Rights and Wrongs: The Global Politics of Population Control* (South End Press 1995); Briggs L, *Reproducing Empire: Race, Sex, Science, and U.S. Imperialism in Puerto Rico* (University of California Press 2002).

⁹¹ Whelan (n 86).

These tensions were particularly pronounced in Latin America and the Caribbean, where profound socio-economic inequalities, weak healthcare infrastructure and limited access to reproductive healthcare intersected with international development agendas.⁹² During the twentieth century, reproductive-health policy across the region was also shaped by external population-control initiatives, including US-supported programmes that promoted fertility reduction as part of broader concerns with population growth, development and political stability.⁹³ Within this context, reproductive health increasingly became linked to poverty reduction and economic modernisation, particularly through development frameworks associated with the Millennium Development Goals.⁹⁴ Although these initiatives expanded attention to women's health, feminist scholars argue that they also instrumentalised reproduction by treating fertility reduction as a development objective.⁹⁵ In practice, this frequently privileged demographic targets over informed consent, creating the conditions in which coercive reproductive practices could emerge under the language of health, development and women's empowerment.

Peru provides a particularly significant example of this dynamic. During the 1990s, Peru implemented an aggressive population control programme under the administration of Alberto Fujimori, ostensibly aimed at reducing poverty and improving maternal health.⁹⁶ Although presented as a voluntary family planning initiative, the programme operated through government-imposed sterilisation targets that placed intense pressure on healthcare providers to increase the number of tubal ligations and vasectomies performed, particularly in rural and Indigenous communities.⁹⁷ Although women were overwhelmingly the principal targets of the campaign, the programme formally encompassed both women and men, and evidence documents coercive vasectomies among rural men.⁹⁸ Rather than promoting reproductive

⁹² Jiménez MA and Rodríguez Vignoli J, 'Evaluating the Millennium Development Goal Target on Universal Access to Reproductive Health: A View from Latin America and the Caribbean' in *Demographic Transformations and Inequalities in Latin America* (Latin American Population Association 2009), 244.

⁹³ Ibid, 245.

⁹⁴ United Nations General Assembly, *2005 World Summit Outcome*, UN Doc A/RES/60/1 (24 October 2005) https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf accessed February 2026.

⁹⁵ Sen G and Germain A, 'Population Policies Reconsidered: Health, Empowerment, and Rights' (1994) 24(3) *International Journal of Health Services* 487.

⁹⁶ Stavig (n 14).

⁹⁷ Rousseau S, 'Reproductive Health Policies in Peru: Discourses, Programmes and Practices' (2012) 21(1) *Journal of Latin American Studies*.

⁹⁸ Ministerio de Salud del Perú, 'Ministerio de Salud presentó informe final sobre esterilizaciones forzadas' (Ministerio de Salud, 2002) <https://www.gob.pe/institucion/minsa/noticias/45001-ministerio-de-salud-presento->

autonomy, family planning became an instrument of demographic governance, with poor and Indigenous women disproportionately targeted and constructed as populations requiring fertility control.⁹⁹ Population policy explicitly linked fertility reduction among marginalised communities to national development and modernisation, positioning Indigenous women's reproduction as an obstacle to economic progress.¹⁰⁰

These policies reproduced longer colonial hierarchies of race, gender and development. Read through a decolonial feminist lens, the sterilisation programme represents a contemporary manifestation of the modern/colonial project, in which Indigenous women were racialised as excessive reproducers whose fertility required technocratic management in the interests of national progress.¹⁰¹ The Peruvian case therefore demonstrates how healthcare systems themselves became sites of reproductive governance, translating demographic and developmental objectives into reproductive control through routine clinical practice rather than exceptional state violence.¹⁰² The programme's coercive character was reflected in both its implementation and its consequences. Medical personnel were not only required to meet unrealistic sterilisation quotas but were frequently incentivised through financial rewards, while access to food assistance and other welfare programmes was reportedly made conditional upon sterilisation in some rural communities.¹⁰³ These practices contributed to numerous deaths arising from medical negligence, the documented forced sterilisation of at least 2,074 illiterate rural women,¹⁰⁴ and 243 recorded cases of human rights violations between 1995 and 2000.¹⁰⁵ The systematic nature of these abuses demonstrates that reproductive violence resulted

[informe-final-sobre-esterilizaciones-forzadas](#) accessed 22 September 2026; Vasquez Del Aguila EI, 'Precarious Lives: Forced Sterilisation and the Struggle for Reproductive Justice in Peru' (2022) 17(1) *Global Public Health*.

⁹⁹ Vásquez del Aguila EI, 'Precarious Lives: Forced Sterilisation and the Struggle for Reproductive Justice in Peru' (2022) *Journal of Latin American and Caribbean Anthropology* 100, 101–103.

¹⁰⁰ Ibid, 112–114.

¹⁰¹ McCain CM, 'Robbing Reproductive Autonomy: Forced Sterilisations in the Americas and the Inter-American Human Rights System's Response' (2022) *Journal of Public and International Affairs* 1, 4–6; Lugones M, 'Heterosexualism and the Colonial/Modern Gender System' (2007) 22(1) *Hypatia* 186, 193–96.

¹⁰² Espejo Nuñez T, 'The Context of Family Planning in Peru' in *Demographic Transformations and Inequalities in Latin America* (Latin American Population Association 2009), 346; Rousseau (n 97).

¹⁰³ Collins D, 'Peruvian Women Intent on Bringing State to Book over Forced Sterilisations' *The Guardian* (14 March 2014) <https://www.theguardian.com/global-development/2014/mar/14/peru-women-forced-sterilisation-justice> accessed February 2026.

¹⁰⁴ Ibid.

¹⁰⁵ *Maria Mamérita Mestanza Chavez v Peru*, Case 12.191, Inter-American Commission on Human Rights, Friendly Settlement Report No 71/03 (22 October 2003) para 9.

not from isolated administrative failures but from a state policy organised around the racialised management of reproduction.¹⁰⁶

International human rights mechanisms played a pivotal role in challenging Peru's reproductive policies, particularly through the intervention of the Inter-American Commission on Human Rights. The Friendly Settlement in *Mestanza Chávez* marked a significant development in recognising coerced sterilisation as a violation of women's rights to life, personal integrity and equality.¹⁰⁷ For the first time, Peru formally acknowledged its international responsibility for abuses arising from the sterilisation programme and accepted obligations to provide reparations, conduct criminal and administrative investigations, reform reproductive health policies and introduce safeguards to prevent future violations.¹⁰⁸ The Settlement therefore transformed coercive sterilisation from a matter defended as domestic family planning policy into one engaging international human rights obligations.

Beyond its immediate legal consequences, the Settlement also challenged the political narratives underpinning Peru's population policy. Ewig argues that its significance lies in exposing the contradiction between the Fujimori government's appropriation of the language of women's rights and reproductive autonomy and the reality of coercive population control, undermining the official claim that sterilisation promoted women's empowerment.¹⁰⁹ Similarly, Boesten contends that the Settlement revealed how the rhetoric of reproductive choice masked quota-driven campaigns that disproportionately targeted poor, rural and Indigenous women, reframing sterilisation as a question of discrimination and reproductive injustice rather than legitimate demographic policy.¹¹⁰

The Settlement prompted a series of important legal and institutional reforms, including revised informed consent procedures, victim reparations and changes to reproductive health policy.¹¹¹

¹⁰⁶ Vásquez del Aguila (n 99), 101–103.

¹⁰⁷ *Mestanza Chavez v Peru* (n 105).

¹⁰⁸ Ibid, 6–7.

¹⁰⁹ Ewig C, 'Hijacking Global Feminism: Feminists, the Catholic Church and the Family Planning Debacle in Peru' in Elliott CM (ed), *Global Empowerment of Women: Responses to Globalization and Politicized Religions* (Routledge 2007) 637–41.

¹¹⁰ Boesten J, 'Free Choice or Poverty Alleviation? Population Politics in Peru under Alberto Fujimori' (2007) 82 *European Review of Latin American and Caribbean Studies* 3, 10.

¹¹¹ *Mestanza Chavez v Peru* (n 105), paras 14.5 and 14.21. See also: Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer, *Nada Personal: Reporte de Derechos Humanos Sobre la Aplicación de la Anticoncepción Quirúrgica en el Perú (1996–1998)* (1998) https://1996pnsrpf2000.files.wordpress.com/2011/07/cladem_nada-personal.pdf accessed August 2020.

Nevertheless, subsequent scholarship suggests that its impact was primarily normative rather than transformative. Ballón argues that, despite Peru's formal acceptance of responsibility, forced sterilisation remained largely absent from the country's post-conflict memory and transitional justice processes, leaving many survivors without meaningful recognition or accountability.¹¹² Likewise, Ewig maintains that reforms did not fundamentally challenge the developmental and neo-Malthusian assumptions underpinning Peru's population policy,¹¹³ while Boesten argues that the programme reflected broader projects of demographic governance rather than administrative failures.¹¹⁴ Consequently, although Inter-American supervision generated significant accountability, legal reform and institutional safeguards,¹¹⁵ subsequent developments suggest that it did not fundamentally dismantle the racialised healthcare governance, developmental imperatives and unequal power relations through which reproductive coercion had been constituted.

This continuing struggle for accountability illustrates the persistence of those underlying structures long after the *Mestanza Chávez* Friendly Settlement. As Vásquez del Aguila demonstrates, legal reforms have not displaced a continuing culture of impunity, limited political will, and enduring racial, class and gender inequalities, prompting survivor organisations, feminist groups and human rights advocates to pursue justice beyond the courtroom.¹¹⁶ The continued exclusion of survivors from official narratives, reparations and sites of memory demonstrates that legal recognition has not translated into broader political recognition, requiring sustained feminist activism to preserve testimony, document state violence and challenge what Ballón describes as a politics of forgetting.¹¹⁷ The continuing mobilisation of survivor organisations and feminist advocates therefore illustrates that, although the Friendly Settlement secured important legal recognition and institutional commitments, litigation alone proved insufficient to dismantle the structural and colonial relations through which reproductive injustice was reproduced.

¹¹² Ballón Gutiérrez A, 'The Effects of Postconflict Memory: Forced Sterilization in Peru' (2023) 50(6) *Latin American Perspectives* (translation Mariana Ortega-Breña).

¹¹³ The Malthusian populations principles argued that 'indigenous, African descent, and other poor populations hampered national progress', and emerged in Latin America in the 1920s and 30s through state health system eugenic practices. See: Ewig (n 109), 637.

¹¹⁴ Boesten (n 110), 10.

¹¹⁵ *Mestanza Chavez v Peru* (n 105), para 14.22, 14.24.

¹¹⁶ Vásquez del Aguila (n 98).

¹¹⁷ Ballón Gutiérrez (n 112).

Feminist scholarship has long recognised that international human rights interventions create important, albeit partial, avenues of accountability by rendering previously marginalised forms of gendered violence legally visible. Nesiah argues that feminist engagement with transitional justice and human rights mechanisms has expanded the normative scope of accountability and secured recognition for women's experiences, while also demonstrating that many survivors continue to seek meaningful justice long after formal legal processes conclude.¹¹⁸ Similarly, Kapur cautions that rights-based interventions often translate structural inequalities into individual legal claims, limiting their capacity to transform the political, social and economic conditions through which gendered violence is reproduced.¹¹⁹ Read through a postcolonial feminist lens, the Peruvian sterilisation programme demonstrates that reproductive coercion was not an aberration but a structural expression of colonial and developmental governance, in which Indigenous women's fertility was racialised, considered to be excessive and subjected to demographic management. In doing so, the case gives concrete expression to Morgan and Roberts' concept of reproductive governance by illustrating how ostensibly progressive public health policy became a mechanism of population control, producing reproductive injustice through inclusion within state healthcare rather than exclusion from it.

The Peruvian case therefore reinforces the article's broader argument about the ambivalent capacity of IHRL. While the Inter-American system succeeded in recognising the violations, securing accountability and prompting significant legal reform, it proved considerably less capable of transforming the racialised, developmental and institutional structures through which reproductive governance had been organised. In this respect, Peru mirrors Ireland in inverted form: whereas postcolonial nation-building in Ireland sought to enforce reproduction, colonial developmentalism in Peru sought to suppress it. Read together, these cases demonstrate that opposite reproductive policies can serve analogous political projects and that, in both contexts, IHRL remained more effective at remedying rights violations than at dismantling the structures that produced them.

Lessons from Ireland and Peru

The two case studies evaluated in this article demonstrate that reproductive governance is not only concerned with regulating reproduction, but with regulating it differentially. As

¹¹⁸ Nesiah V, 'Gender and the Politics of Law in Transitional Justice' (2011) 20 *Columbia Journal of Gender and Law* 785.

¹¹⁹ Kapur R (n 32).

scholarship on stratified reproduction has long argued, states do not govern reproduction equally; rather, they determine whose reproduction is valued, encouraged, protected or constrained according to broader projects of social, political and economic ordering. Far from simply reflecting these inequalities, stratified reproduction actively ‘reflect[s], reinforce[s], and intensif[ies]’ them, reproducing social hierarchies through reproductive governance itself.¹²⁰

In this light, Ireland’s constitutional prohibition of abortion and Peru’s coercive sterilisation programme should not be understood as opposing reproductive projects, but as opposite manifestations of the same governing logic. While the Irish state sought to secure the reproduction of women positioned as central to the moral and demographic future of the postcolonial Catholic nation, the Peruvian state sought to suppress the fertility of poor Indigenous women whose reproduction was constructed as incompatible with projects of national development. In both cases, the state assigned reproductive value through legal and institutional regulation, although the populations differentiated by these interventions and the mechanisms through which reproduction was governed differed substantially.

This insight resonates with the reproductive justice tradition developed by Black feminists, who rejected the narrow focus of reproductive rights discourse on abortion and individual choice in favour of an analysis capable of explaining how reproductive oppression is organised across race, class and gender.¹²¹ As Ross argues, reproductive justice emerged because existing reproductive politics failed to account for the intersectional conditions through which reproductive relations are produced and reinforced, instead requiring a framework capable of explaining reproductive oppression across different populations and historical contexts.¹²² Rather than treating abortion restrictions, coercive sterilisation, welfare regulation or the policing of motherhood as discrete injustices, reproductive justice understands them as interconnected expressions of broader systems of racialised and gendered power. This genealogy is rooted in Black feminist organising, which sought to expose how reproductive politics has historically been shaped by white supremacy, patriarchy and capitalism rather than by questions of individual choice alone.¹²³

¹²⁰ Colen (n 22).

¹²¹ Ross and Solinger (n 23).

¹²² Ross LJ, ‘Reproductive Justice as Intersectional Feminist Activism’ (2017) 19(3) *Souls* 286, 287.

¹²³ *Ibid*, 288.

Read together, these frameworks demonstrate that the central question is not simply whether states restrict or expand reproductive rights, but how they differentially distribute reproductive autonomy. As Petchesky argues, reproductive politics concerns not merely the defence of bodily autonomy against state interference, but the social meanings attached to bodies and the relationships through which bodily integrity is constituted.¹²⁴ She therefore cautions against reducing reproductive freedom to an individualised conception of self-ownership, arguing instead that claims to bodily autonomy function as political strategies for securing recognition, citizenship and social justice rather than descriptions of isolated individual liberty.¹²⁵ From this perspective, reproductive governance is fundamentally concerned with assigning differential value to reproductive bodies according to historically contingent projects of nation-building, colonialism and development. This is precisely the dimension that an international human rights framework, oriented primarily towards identifying violations of individual rights and securing state compliance, struggles to apprehend.

Ireland and Peru thus represent structurally opposite yet analytically connected modalities of reproductive governance. Despite pursuing opposite reproductive imperatives, in both contexts reproduction became a means through which the state sought to shape the nation, defining who should reproduce, under what conditions, and in service of which political project. These modalities of reproductive governance also help explain the differing trajectories of IHRL across the two case studies. The apparent divergence does not suggest that IHRL is inherently more effective in one context than the other. Rather, the Peruvian litigation centred on identifiable acts of coercive sterilisation attributable to state officials and healthcare providers, making violations more readily cognisable within existing human rights doctrine. By contrast, reproductive governance in Ireland was diffused across constitutional law, healthcare institutions, clinical discretion and postcolonial constructions of national identity, rendering the structural conditions underpinning reproductive injustice less amenable to rights-based intervention. Yet, despite these doctrinal differences, both case studies ultimately expose the same structural limitation: while IHRL has become increasingly effective at identifying and remedying specific reproductive rights violations, it remains less equipped to dismantle the

¹²⁴ Petchesky RP, 'The Body as Property: A Feminist Re-vision' in Ginsburg FD and Rapp R (eds), *Conceiving the New World Order: The Global Politics of Reproduction* (University of California Press 1995) 387–88.

¹²⁵ Ibid, 389.

colonial, institutional and social relations through which reproductive governance is constituted and reproduced.

These modalities of reproductive governance also illuminate the differential capacities of international human rights law. In Peru, the sterilisation programme involved readily identifiable acts of coercion attributable to state officials, engaging well-established prohibitions relating to bodily integrity, torture, informed consent and discrimination. Consequently, the Inter-American system was able to identify clear rights violations, attribute state responsibility and secure Peru's acknowledgement of international responsibility together with commitments to reparations, legislative reform and institutional change through the *Mestanza Chávez* Friendly Settlement.¹²⁶ By contrast, although UN treaty bodies increasingly recognised that Ireland's abortion regime was incompatible with the ICCPR and CEDAW and acknowledged its broader structural harms—including forced travel, stigma, discriminatory healthcare access and institutional barriers to reproductive autonomy—the legal mechanisms available to them remained principally directed towards identifying rights violations and recommending legislative reform.¹²⁷ Despite the repeal of the Eighth Amendment and the partial decriminalisation of abortion, reproductive governance has therefore persisted through statutory limitations, healthcare organisation, clinical discretion, conscientious objection and geographical inequalities in service provision. Placing Peru in dialogue with Ireland thus demonstrates not that IHRL is incapable of recognising structural reproductive injustice, but that its institutional architecture is better equipped to identify and remedy legally cognisable harms than to transform the political, institutional and colonial conditions through which reproductive governance is reproduced.

These consequences, however, should not be understood simply as one of success and failure, but as reflecting the different forms of reproductive harm at issue. In Peru, coercive sterilisation constituted a readily identifiable violation of internationally recognised rights to bodily integrity, reproductive autonomy and free and informed consent, while the systematic targeting of poor, rural and Indigenous women situated these abuses within broader patterns of discrimination and structural inequality.¹²⁸ The coercive nature of these practices also engaged

¹²⁶ Ewig (n 109); Boesten (n 110).

¹²⁷ Donnelly M and Murray C, 'Abortion Care in Ireland: Developing Legal and Ethical Frameworks for Conscientious Provision' (2020) 148 *International Journal of Gynecology & Obstetrics* 127; Enright (n 83).

¹²⁸ Ballón Gutiérrez (n 112); Vásquez del Aguila (n 99), 114.

well-established prohibitions on torture and cruel, inhuman or degrading treatment, rendering them more justiciable within established IHRL.¹²⁹ Consequently, the Irish case illustrates that reproductive injustice may persist through institutional forms of governance that are less amenable to conventional rights-based adjudication than the overt coercion characterising the Peruvian sterilisation programme.

Bringing these cases into dialogue therefore reveals an important structural limitation of IHRL. The argument advanced here is not that IHRL fails to recognise reproductive injustice or secure meaningful forms of accountability. On the contrary, as the preceding discussion demonstrates, IHRL has developed increasingly sophisticated standards of state responsibility and has proved capable of rendering reproductive harms legally visible, attributing responsibility to states and requiring significant legal and institutional reform. Rather, the cases reveal that the capacity of rights-based mechanisms to intervene depends in part upon how reproductive power is institutionally organised. Where reproductive injustice takes the form of discrete and attributable acts of coercion, as in Peru, existing human rights frameworks can render those harms legally cognisable, attribute responsibility to the state and generate forms of accountability and legal reform. Where reproductive governance is dispersed across constitutional rules, healthcare institutions, clinical discretion and broader social inequalities, as in Ireland, the same frameworks have greater difficulty capturing the structural relations through which reproductive autonomy is constrained. The limitation of IHRL therefore lies not simply in its tendency to translate structural injustice into individual rights claims—a concern extensively identified in feminist international legal scholarship¹³⁰—but in the possibility that the institutional organisation of reproductive governance determines which dimensions of that injustice become visible to human rights law at all.

¹²⁹ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 7; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85; *American Convention on Human Rights* (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123, art 5; Méndez JE, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc A/HRC/22/53 (2013).

¹³⁰ Kapur R, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2018); Merry (n 34); Charlesworth H, 'Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations' (2005) 18 *Harvard Human Rights Journal* 1; Otto D, 'Lost in Translation: Re-Scripting the Sexed Subjects of International Human Rights Law' in Orford A (ed), *International Law and its Others* (Cambridge University Press 2006) 318.

This distinction has important implications for feminist engagement with IHRL. It suggests that legal recognition should not be treated as synonymous with structural transformation. In Peru, recognition of forced sterilisation as a violation of bodily integrity, reproductive autonomy and informed consent could establish state responsibility without necessarily dismantling the racialised and developmental assumptions through which Indigenous women's fertility had been constructed as a problem to be managed. In Ireland, the repeal of the Eighth Amendment removed a central legal mechanism of reproductive restriction, but did not itself eliminate the institutional practices through which access to abortion continued to be mediated, including clinical discretion, conscientious objection and uneven geographical provision. In both contexts, therefore, the resolution of the legally cognisable violation could coexist with the persistence of the institutional and political conditions that produced reproductive inequality.

The contribution of this comparison is consequently not to demonstrate again that IHRL is structurally limited, but to identify a particular mechanism through which that limitation operates in the field of reproductive governance. The legal visibility of reproductive injustice is contingent upon the form that governance takes: coercive practices that can be attributed to identifiable state actors are more readily translated into rights violations than forms of governance embedded within healthcare systems, administrative practices and historically constituted social relations. A substantive reproductive-justice approach must therefore ask not only whether a particular reproductive practice violates an individual right, but how the institutions through which reproduction is governed produce and distribute reproductive autonomy in the first place.

That reproductive justice remains urgently contested across vastly different contexts further underscores this point. The rollback of United States' constitutional protections in *Dobbs*,¹³¹ near-total prohibition on abortion in Poland and ongoing struggles for accountability among Peru's sterilisation survivors collectively demonstrate that reproductive injustice is not confined to particular regions or developmental stages. It is produced through enforced motherhood and suppressed fertility, through constitutional prohibition and clinical gatekeeping, in the Global North as readily as the Global South. The Ireland-Peru case studies therefore reveal reproductive governance not as a problem of underdevelopment but as a

¹³¹ *Dobbs v Jackson Women's Health Organization* 597 US 215 (2022).

persistent feature of state power shaped by the intersection of colonial legacies, institutional arrangements, and political forces through which women's reproduction continues to be regulated.

Conclusion

This article has examined the capacity of IHRL to advance substantive reproductive justice through a dialogical analysis of abortion governance in Ireland and coercive sterilisation in Peru. By placing these seemingly opposite reproductive regimes in conversation, it has demonstrated that reproductive governance is not defined by whether states encourage or suppress reproduction, but by the differential regulation of reproductive capacity in pursuit of broader projects of nation-building, demographic management and social ordering. In doing so, the article has shown that, while IHRL has become increasingly effective at rendering reproductive harms legally visible and securing important forms of accountability, its liberal, state-centric architecture remains principally directed towards identifying rights violations and securing legal compliance rather than transforming the colonial, racial and institutional structures through which reproductive governance is produced.

Reading Ireland and Peru dialogically therefore suggests that the limitations of IHRL do not lie in an absence of doctrinal development or normative commitment. Rather, they lie in the mismatch between legal frameworks designed to remedy discrete rights violations and forms of reproductive governance that are embedded within healthcare institutions, development agendas, postcolonial nation-building and racialised population management. These case studies demonstrate that substantive reproductive justice requires attention not only to legal reform, but also to the political projects and institutional arrangements that determine whose reproduction is protected, whose is constrained, and whose reproductive autonomy remains contingent.

The central lesson of this article is not that IHRL is incapable of advancing reproductive justice, but that its greatest contribution lies in creating the legal and political conditions from which broader structural transformation may begin, rather than constituting that transformation itself. A reflexive feminist engagement with IHRL therefore requires a dual strategy. Rather than abandoning rights-based approaches, feminist scholars and activists should continue to mobilise international human rights mechanisms as important sources of recognition,

accountability and legal reform. As both *Mellet* and *Mestanza Chávez* demonstrate, international human rights bodies have played a significant role in rendering reproductive harms legally visible, articulating increasingly sophisticated standards of state responsibility and creating political opportunities for reform. Yet these cases also demonstrate that legal victories become transformative only when they are translated into sustained feminist organising. In Ireland, international human rights findings acquired political force through grassroots mobilisation, coalition-building and anti-stigma campaigning that culminated in constitutional reform.¹³² Similarly, in Peru, survivor organisations, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) and feminist advocates¹³³ have continued to press for accountability long after the Friendly Settlement, illustrating that litigation alone cannot dismantle the structural conditions through which reproductive injustice is reproduced. Consequently, feminist engagement with IHRL must extend beyond securing legal recognition towards transforming the institutional sites through which reproductive governance operates. This requires sustained attention to healthcare governance, clinical decision-making, conscientious objection, provider training, informed consent procedures, resource allocation and institutional discrimination. Reproductive injustice often persists through administrative and healthcare practices long after formal legal reform has been achieved.

¹³² Carnegie and Roth (n 73); Fischer C, 'Feminists Redraw Public and Private Spheres: Abortion, Vulnerability, and the Affective Campaign to Repeal the Eighth Amendment' (2020) 45(4) *Signs: Journal of Women in Culture and Society*; Fitzsimons C, 'Critical Education in the Irish Repeal Movement' (2022) 54(2) *Studies in the Education of Adults* 128.

¹³³ Vásquez del Aguila (n 99); CLADEM Peru, *For Justice and Reparation Free of All Forms of Discrimination Against Women in Relation to Sexual Health and Sexual Violence During the Armed Conflict: Alternative Report on the Implementation of the UN Convention on the Elimination of Discrimination against Women (CEDAW) by Peru* (January 2007) https://www.fidh.org/IMG/pdf/Peru_Alternative_Report_CEDAW.pdf accessed July 2026; CLADEM Peru, *Justice Pending: Forced Sterilisations in Peru* (January 2012) <https://cladem.org/biblioteca/justicia-pendiente---esterilizaciones-forzadas-en-peru> accessed July 2026.