

# In the Flesh – The Politics of Abortion in Ireland

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*Centuries ago,  
Women accused of witchcraft faced,  
amongst other ordeals,  
Trial by water  
[...]  
A body is a body is a body is a body is a  
body is a body is a body  
Not a house. Not a city. Not a vessel, not  
a country  
The laws of the church have no place on  
your flesh  
[...]  
We ask for the land over the water. Home  
over trial. Choice over none.  
For our foremothers, ourselves, the  
generations yet to come  
Witches or women - these are our bodies  
which shall not be given up*

These lines from the poem “We Face This Land” by Irish author and novelist Sarah Maria Griffin were published on the website of *The Irish Times* in 2016, accompanied by Irish

director Dave Tynan’s eponymous short film in support of the *#repealtheeighth* pro-choice campaign (Griffin 2016, n.p.). In the clip, the powerful verses are spoken by women walking on a beach, among them the comedian and writer Tara Flynn, the *Irish Times* journalist Róisín Ingle, former student activist and now independent politician Lynn Ruane and her daughter, the actor Jordanne Jones. The video features women of all ages wearing black shirts displaying the word “repeal” in white capitals. They are walking barefoot towards the sea. Some enter the water until it is up to their necks while others fully submerge. During this scene, symbolically evoking witchcraft trials, all women continue to recite the poem one by one. The last shot displays the women standing together at the seashore speaking the final verses in chorus. The clip ends with the word “repeal” set against a black background.

The power of this video arises from the combination of Griffin's verses with the representation of *real* women with *real* bodies, who are still suffering under "archaic" abortion laws based on moral and religious doctrines that cause distress, pain and – most of all – "shame" (Smyth 2016, n.p.). The projects supported Ireland's abortion rights campaign that culminated in the repeal of the *8th Amendment to the Irish Constitution* in May 2018. This amendment, ratified in 1983, provided in Article 40.3.3 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 [...] to defend and vindicate that right" (De Londras/Enright 2018, 1; emphasis added). The campaign's website acknowledges the repeal of the *8th Amendment* on May 25, 2018. It also clearly states that "Our work is not done yet" (Cosgrave n.d.).



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## Pregnant Female Bodies as Battlefields for Politics

In the strictly legal sense, until the early nineteenth century abortion in Great Britain and Ireland was only considered a crime under special circumstances. This was because, in the philosophical, religious and medical discourses of the time, women were not considered pregnant before the foetus 'quickened' (i.e. moved), usually between the fourth and fifth month of gestation. In Aristotelean terms, still adhered to by the early church fathers, it took 40 days after conception for a boy and 80 to 90 days for a girl to acquire a soul, a view that, apart from its dubious factual basis, reflects a sexist attitude further contributing to a masculinist perspective on pregnancy. Before it moved, the foetus was just part of the female body and not a person in its own right; until abortion was criminalized women who lost their foetuses simply 'miscarried'. Since the 'quickening' of the foetus could usually only be identified by the mothers themselves, they were the ones to determine their own pregnancies. This granted them a certain, albeit small, scope for self-determination and agency.

By the beginning of the nineteenth century, abortion was regarded as a crime. The *Ellenborough Act* of 1803, also termed the *Malicious Shooting or Stabbing Act*, made abortion after the 'quickening' of the foetus a criminal act

that was punished with the death penalty. Of course, this law did not prevent unwanted pregnancies, and many girls and women turned to secret and thus more dangerous methods, poisons and backstreet abortions performed by botchers that could permanently damage their health or even result in death (*The Independent* 2005; BBC n.d.).

It should be emphasized here that the reasons for the criminalization of abortion in the early nineteenth century are complex. A number of factors contributed to this shift, including the repression of the (traditionally feminine) realm of midwifery and the rise of the (masculine) medical discipline of obstetrics as the dominant knowledge system concerning pregnancy and birth. From about 1800 onwards, it fell to – mostly male – doctors to decide when a woman was pregnant. Eventually, the prohibition of abortion was extended to the period before the foetus ‘quickened’. The death penalty, however, was repealed in the amendment of the *Ellenborough Act* in 1837 and replaced with life sentence (abortionrights n.d.). Pragmatic reasons also fostered this process of criminalization; leading doctors of the nation regarded untrained abortionists not only as a threat to public health but as rivals to their own profession since they offered cheap treatments (Mohr 1978, 34, 147). I argue that the pregnant female body posed a threat not only to

the wealth of the (male) obstetricians but also to that of the nation. It became the battlefield for British and Irish politics.

### **Establishing the Basis for the 8th: Abortion as Offence Against the Person**

In 1861 abortion laws were again amended. The *Offences Against the Person Act* rendered every abortion a criminal act in Great Britain and Ireland. Anyone who performed or participated in an abortion could be sentenced to up to 14 years in prison (Pierson/Bloomer 2017, 178; Felzmann 2014, 195): *Every Woman, being with Child, who, with Intent to procure her own Miscarriage, [...] shall be guilty of Felony, and [...] shall be liable [...] to be kept in Penal Servitude for Life or for any Term not less than Three Years [...], with or without Hard Labour, and with or without Solitary Confinement* (Legislation.gov.uk a) n.d.).

With the strengthening of women’s rights and mass protests against abortion laws in the twentieth-century, legislations were liberalised. It took more than 100 years before the 1967 *Abortion Act* rendered ‘medical’ abortions – by a registered medical practitioner only and after the approval of two other doctors – legal in Great Britain until the 28th week of gestation. The Republic of Ireland, having gained its independence in 1921, retained the older British legislation, however. In the UK, it was

also legal to terminate a pregnancy beyond this period, but only if the mother's life was at risk or if the foetus showed fatal abnormalities (Legislation.gov.uk b) n.d.). Still, this did not mean that women could end their pregnancies simply because they wanted to. There had to be medical evidence that a pregnancy would put the mother's health at risk. Thus, although the new Act gave women some legal ground to defend themselves, abortion still remained a crime as under the previous law.

What sometimes causes confusion is the fact that the *Abortion Act* 1967 was never extended to one of the UK's regions: Northern Ireland. During the 1960s the Parliament of Northern Ireland was more concerned with the beginnings of what would turn into a three decades long civil war ('The Troubles' 1968-1998) between mostly Protestant unionists and Catholic nationalists – it simply ignored the example set by the rest of the UK. Westminster turned a

blind eye to the problem and remained reluctant to adjust Northern Ireland's abortion laws (Kelly 2016, n.p.). As a result, abortion throughout Ireland is still subject to the 1861 *Offences Against the Person Act* until this very day.

### Acts, Cases and Referenda: From 1967 to 2013

The main question is: if abortion had already been illegal since the mid-nineteenth century throughout Ireland, why did the Republic see the need to amend this law in the 1980s in favour of the anti-abortionists? As stated, Northern Ireland had simply ignored the *Abortion Act* 1967 while Westminster continued to look away. In the Republic of Ireland, however, Irish conservatives and the Church seemed alarmed by certain international developments. After the *Abortion Act* in the UK, the US Supreme Court followed suit; it, too, legalized the termination of pregnancies until the 28th week of gestation (subsequently reduced to 24 weeks) in the famous 1973 *Roe v. Wade* case. In *Roe v. Wade* the court decided in favour of the 21-year old Norma McCorvey from Texas, single mother of two, who was seeking a legal abortion of her third pregnancy. Because Irish conservatives feared this liberalisation of the law might spread to the Republic, pro-life campaigns were launched to amend the Constitution with a view to preemptively strengthening the Irish ban. This resulted in a referendum



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in which 67% voted in favour of “the right to life of the unborn” (Nugent 2018, n.p.). The *8th Amendment 1983*, a law that grants the foetus personhood, thus restricted judicial interpretation to the degree that it allowed abortions solely if the mother’s life was at risk. However, “no attempt was made to clarify its legal implications, especially on the questions of how to balance the woman’s and the fetus’s rights to life” (Felzman 2014, 193). In reality, the question whether a woman’s life was actually at risk remained a decision to be made by others, not by the woman concerned. As a result, not much had changed: the pregnant female body continued to be used as a battlefield for conservative politics and Irish patriarchy.

Unsurprisingly, the *8th Amendment* had severe consequences for thousands of pregnant Irish women. In 1983, shortly after the implementation of the *8th*, Sheila Hodggers was denied cancer treatment because doctors feared that the drugs might harm the foetus (De Londras/Enright 2018, 13). Despite her husband’s appeal for mercy she was forced to carry her pregnancy to term and “died in agony two days after the death of her premature baby” (McKay 2018, n.p.). In 1987, the High Court additionally prohibited the provision of information about abortion at home and abroad (Cullen 2012). In 1992, a 14-year-old girl became pregnant after a

man known to her and her family had been sexually abusing her for several years (*thejournal.ie* 2012). During the court proceedings of the so-called *X case* she and her parents were hindered from obtaining an abortion in the UK by the imposition of a travel ban. The High Court based its decision on article 40.3.3 of the *8th* that acknowledges “the right to life of the unborn” and granted the injunction despite the fact that the girl had become suicidal. After mass protests the Supreme Court finally lifted the ban and the *X case* culminated in a referendum in late 1992 that made abortion travels and the provision of respective information in Ireland legal (Felzman 2014, 193; Nugent 2018, n.p.) In 2012, Savita Halappanavar was admitted to hospital in Galway suffering from severe back pain. Although doctors identified her miscarriage, they refused to abort the foetus for days because they could still detect a heartbeat. After spontaneously delivering a stillborn Savita Halappanavar fell into a coma, suffered a septic shock and eventually died of multiple organ failure and cardiac arrest (Holland).

This case led to widespread protests and forced legislators to act, which resulted in the *Protection of Life During Pregnancy Act 2013* that legalized abortion if the pregnant woman’s life was at risk. Whether she ‘qualified’ for such a ‘crisis pregnancy’ was to be decided not



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by her, but by a number of specialists. If she was suicidal, it also required the report of two psychiatrists in addition to her obstetrician (Felzman 2014, 196). In spite of its title, the Act only provided for narrowly defined medical emergencies, excluding cases of rape or of fatal abnormalities of the foetus (Felzman 2014, 194). This meant that women who received the diagnosis that their unborn child would not survive long outside of or even inside the womb were forced to continue their pregnancy until the non-viable foetus was born or had died inside the woman's body. Only in the latter case was a termination legal. Since 2013 the UN Human Rights Commission has repeatedly criticized Ireland's "abusive and intolerable" abortion laws for harming Irish women and violating their human rights; legislation compelled women in emergency situations to undergo "cruel, inhuman and degrading treatment[s]"

by denying them medical services and impelling them to travel abroad, which for many remained one of the very few possibilities to end an unwanted pregnancy (Amnesty International 2017, n.p.; United Nations 2018, n.p.).

### **Options and Choices: 'Abortion Tourism' and the Home Use of Pills**

Since the ban on abortion was emphasized by the *8th Amendment of the Constitution Act 1983*, many Irish women have been secretly seeking abortions in the UK or elsewhere. After the 1992 *X case* the Irish government not only legalized pregnancy terminations abroad but even assisted women by offering information about suitable clinics in the shape of the Treatment Abroad Scheme. This led to what the Irish government euphemistically called "abortion tourism" (Gilmartin/White 2011, 275-6). As Gilmartin/

White point out, the problematic term ‘tourism’ suggests option and choice, just like any other form of medical tourism such as cosmetic surgery. It also ignores the financial side: “A trip to Britain is expensive. It involves travel costs, accommodation costs, and the cost of the procedure, estimated at between 965 and 1,750 Euros in total in 2005” (Gilmartin/White 2011, 275, 277). Other data show that between 1980 and 2018 more than 170,000 Irish girls and women travelled abroad for an abortion – 3,265 to the UK alone in 2016 (*Thejournal.ie* 2018). These trips often required women to take time off work or to lie to their families. What is more, only Irish citizens or women holding an EU passport could ‘benefit’ from the right to travel; non-EU residents living in Ireland had to undergo tedious application processes. Undocumented women were forced to resort to dangerous backstreet abortions. ‘Abortion tourism’ thus absolved the Irish state from the duty to provide legal and affordable services at home (Gilmartin/White 2011, 277-278).

Women who were unable to go abroad turned to self-medication. Since neither travel bans nor criminalisation have ever prevented unwanted pregnancies, the home use of abortion pills has become widespread among Irish women. Since 2001 the number of recorded abortion travels has declined, owing to the increase

of online information about herbal or pharmaceutical abortifacients and surely also to the increased availability of contraceptives under the *Health (Family Planning) (Amendment) Acts* of the 1980s and 1990s. Since 2006 and 2014 two organisations – Women on Web (WoW) and Women Help Women (WHW) – supply abortion pills and advice via the internet. Between 2010 and 2015, 5,650 Irish women requested access to abortion pills from Women on Web alone. This, of course, can never replace the medical advice of an expert or local health care. Further, the illegal selling of a desperately needed drug always holds the potential for a black market (Sheldon 2016, 91, 92, 98). The fact that none of the activists providing access to these pills has been prosecuted so far suggests a legal limbo.

On the one hand, women do not have access to abortion at home, but on the other they have the explicit right to travel abroad (if they can afford it), the right to information about suitable clinics and the right to aftercare in Ireland. The downright absurdity of the Irish legislation lies in the legitimization of the “extra-territorial use of abortion services whilst simultaneously entrenching a domestic failure to provide them” (Sheldon 2016, 97).

## What Happens Next – Votes are Not Laws

The people of the Republic of Ireland have voted. On May 25, 2018, 66.4% decided not to subordinate a woman's constitutional rights to that of the foetus anymore: "How much pain, suffering or risk the pregnant person can be compelled to endure – [will soon] carry [...] constitutional weight" (De Londras/Enright 2018, 2). The vote does not mean that abortion is now legal. Legislation is yet to be approved. Until the appropriate Bill is passed, abortion is still considered an 'offence against the person' and can be punished with life imprisonment. As Ireland's Minister for Health, Simon Harris, had announced, the new law was passed in January 2019.

But what about Northern Ireland? In October 2018, a Ten Minute Rule Bill was introduced looking to repeal respective passages of the *Offences Against the Person Act 1861* with the aim to 'properly' decriminalize abortion in Great Britain and Northern Ireland, meaning that abortion "would be treated like any other clinical procedure" (Ryan 2018, n.p.). As expected, the Bill failed in the second reading, with the London government unwilling to impose the necessary follow-up legislation on a devolved Northern Ireland. As the 1967 *Abortion Act* has never applied to Northern Ireland, there still is a lot of work to do – once more, the sensitive political

situation in Northern Ireland is blocking all initiatives to reform the 19th century abortion legislation. In November 2018, Wales also offered free abortion services to women from Northern Ireland (BBC.com.news 2018). In December a group of 40 mostly anti-abortion GPs walked out of a meeting, held at the Irish College of General Practitioners in Dublin to discuss the new provision of legal abortion services from January 2019 on. Although Irish GPs continue to have the right of 'conscientious objection', Simon Harris criticized them for giving women "the cold shoulder" (Cullen 2018, n.p.). But in the same month, the *Irish Times* also wrote: "We used to accept that the killing of innocent human beings is wrong" (Binchy 2018, n.p.). These are just some of the many anti-abortionist examples that demonstrate the ongoing divisive potential of an issue that should concern the affected women alone. They also confirm the power of the pregnant female body, so powerful that institutions like the church and the state recognize it as a threat in need of control.

## Concluding Remarks

The *8th Amendment of the Constitution of Ireland* was never necessary. The referendum that led to it in 1983 was the result of "a potent mix of political turbulence, religious domination and conservative lobbying" (De Londras/Enright 2018, 3). With the increasing secularisation of post-Celtic

Tiger Ireland, however, the social power of the Catholic church is visibly on the wane. Tainted by the scandal of the Magdalene laundries for unwed mothers (a euphemism for penitentiary work houses), and the gradual public disclosure of the 1993 discovery of a mass grave for babies in the grounds of a convent, the church has been losing moral, and

success of the Repeal Campaign in 2018 may also be linked to the recent revival of 21st century feminism. Young women in the campaign have certainly been using the social media to great effect this time. Yet, Pro-choice campaigners in Northern Ireland will still need to march, on beaches and through streets, using physical presence to protest against



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thus cultural, authority. Other referenda in Ireland that, for instance, led to the legalization of divorce (1996) or same-sex marriage (2015) demonstrate that a younger, more urban and European generation is taking over.

If the *8th Amendment of the Constitution of Ireland* can be regarded as part of the 1980s backlash against the success of the 2nd wave women's movement, the cultural shift that finally led to the

laws that deny women the sovereignty over their own bodies. The pregnant female body has long enough been a battlefield for conservative Irish politics. As Griffin underscores in her poem, “a body is a body is a body”. It is as *real* as the women who own it. Neither the laws of the church nor of the state have a place on its flesh. Ireland's work is not done yet.

## TIMELINE

- 1803: the *Ellenborough Act* makes abortion after 'quickening' liable to the death penalty
- 1837: the death penalty is replaced with life sentence
- 1861: the *Offences Against the Person Act* renders every abortion a criminal act
- 1921: Ireland gains its independence from Britain, Northern Ireland remains in the UK
- 1967: the *Abortion Act* legalizes abortion under certain circumstances in the UK
- 1968-1998: The Troubles dominate Northern Ireland politics; the *Abortion Act* is ignored
- 1973: *Roe vs. Wade* case leads to the legalization of abortion in the US
- 1983: *8th Amendment of the Constitution of Ireland* enshrines the rights of the unborn
- 1983: Sheila Rodgers is denied cancer treatment and dies after birthing a non-viable foetus
- 1992: *X case*: a 14-year-old rape survivor is temporarily prevented from travelling abroad
- 1992: referendum makes travel for abortion-seeking Irish women legal
- 2012: Savita Halappanavar dies from septic shock after being refused an emergency abortion
- 2013: *Protection of Life During Pregnancy Act* legalizes abortion under certain circumstances
- 1980-2018: more than 170,000 girls and women travel abroad to access abortion services
- 2018, May 25: *8th Amendment* repeal referendum: 66.4% vote for yes
- 2018, October 23: *Ten Minute Rule Bill* seeks to decriminalize abortion in Northern Ireland, but fails in the 2nd reading in November 2018
- 2018, November 9: Wales offers free abortion service to women from Northern Ireland
- 2018, December 2: 40 anti-abortionist GPs walk out of a meeting in Dublin
- 2019, January 1: scheduled date for the provision of legal abortion services in Ireland

- 2019, January: a 12-year-old Northern Irish victim of sexual assault has to travel to the UK
- 2019, March: activists march for reproductive rights during Women's Day rally in Belfast
- 2019, April 25: The Women and Equalities Committee of the House of Commons publishes report on unsolved legal and health care problems for abortion-seekers in Northern Ireland
- 2019, June: new figures show that travels to the UK are slowly declining while the purchase of abortion pills online is rising

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