

# “#Repealthe8th”: Ireland, Abortion Access and the Movement to Remove the Eighth Amendment

SINÉAD KENNEDY\*

## Abstract

Abortion is illegal in almost all circumstances in Ireland, permitted only where there is a risk to the life of the woman due to the eighth amendment to the Irish Constitution. While abortion is banned, women living in Ireland do access abortion; they do so legally by travelling abroad, and illegally within Ireland by accessing the abortion pill online. This access is highly mediated by race, class and migration status. This article will consider the politics of Ireland’s abortion ban through the prism of public debates around abortion, reflecting on the discursive devices employed to both challenge and uphold the status quo on abortion. This conclusion will focus on different dimensions of the “Repeal” movement; a movement that propelled Ireland to finally face up to the reality of abortion and change its laws through removing the eighth amendment from the constitution.

**Keywords:** Abortion; Migration; Repeal; Movement; Ireland

On Friday 25<sup>th</sup> May 2018 the Irish electorate voted by two to one majority to remove Article 40.3.3, the prohibition on abortion, from the Irish Constitution. While opinion polls had suggested that those who campaigned to remove the ban on abortion would win, it was predicted to be a close result; no one predicted the sheer scale of the victory and the support from every section of society, young and old, urban and rural. In the immediate aftermath of the referendum the result was heralded as nothing short of revolutionary by journalists and activists alike who understood it to be part of a major gender and generational shift in Irish political life. Abortion has always been illegal in almost all circumstances in Ireland, permitted only where there is a ‘real and substantial’ risk to the pregnant woman’s life. The presence of Article 40.3.3, known as the eighth amendment in the Irish Constitution has had far reaching implications, not for only women’s lives, health and choices but also for wider issues of gender equality and citi-

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\* sinead.m.kennedy@mu.ie

zanship in Ireland. Yet while abortion is banned, women living in Ireland do still access abortion; they do so legally by travelling abroad to Britain and other European countries, and illegally within Ireland by accessing the abortion pill online. This article will draw on key Irish feminist and cultural studies scholarship to consider the politics of Ireland's abortion ban and to reflect on the discursive devices employed to both challenge and uphold the status quo on abortion. Employing a materialist-feminist lens it will explore how women's navigation of abortion restrictions are heavily mediated by race, class and migration status. The conclusion will focus on exploring the different dimensions of the "Repeal" movement. In particular it will consider how a predominantly young, creative, dynamic and political-determinate grassroots movement propelled Ireland to face the reality of abortion and change its laws through 'repealing' the eighth amendment.

## Context

In order to understand how Ireland became the first country in the world to introduce a constitutional ban on abortion it is necessary to consider how control of women's reproduction capacities came to be so central, indeed defining, to the Irish State. Debates within Irish studies<sup>1</sup>, have tended to draw attention to how the State's project of national identity formation in the decades following political independence "utilised the heteropatriarchal family and the Catholic Church's ideal of sexual morality" in ways that were particularly damaging for Irish women (Smith 2007, p. 137). The roots of this can be found in the nineteenth century, and involve a complicated history of problematic fertility. In the early decades of the nineteenth century, and up to the mid-1840s, Ireland had a very high general fertility rate and an "abnormally high" marital fertility rate (Mokyr, Ó Gráda 1984, pp. 479-80). The Great Famine (1845-49) resulted in the deaths of over 1 million people and the decade that followed saw the emigration of over 2 million people, creating a rise in the marital age and celibacy rates, and a decline in birth and fertility rates. Nevertheless by European standards Ireland's fertility rates remained high due to the desire among the Catholic clergy to prevent the use of contraceptives, and the related need to affirm the virtue of large families (Ferriter 2009, pp. 299-300). These large families were only considered virtuous when they occurred within marriage with the "stigma of illegitimacy" remaining strong throughout much of the twentieth century (Ferriter 2009, p. 251). With the growing influence of Catholic moral teaching, marital fertility was valued, and birth control and abortion illegal.

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1 See for example Backus (1999); Conrad (2004); Ferriter (2009); Inglis (1998); McAvoy (1999); Meaney (2010).

Following independence from Britain in 1922 the newly formed State struggled for definition and identity. The nationalist desire to “create a new imagined community within the boundaries of the twenty-six-county state” allowed the emergence of a society that silenced internal challenges and contradictions while simultaneously representing that society as pure and untainted by external corruption (Gray, Ryan 1998, pp. 126–7). The vision of the stable traditional family that became so cherished by official “Catholic Ireland” rested upon a manifestly brutal system of containment where women and their children were considered commodities for the Church with the knowledge and complicity of the State (see Rafferty 2002). Catholicism as the principle regulating ideology conferred a much needed legitimacy on the new post-colonial state and was quickly reflected in the laws of the new state: Divorce was outlawed in 1925, followed by a ban on the distribution of literature advocating birth control in 1929 and the sale and importation of contraception in 1935. As a result, “women’s political, economic and reproductive rights” were “so severely curtailed so as to make it clear and explicit that women were ... barred from claiming for themselves a political subjectivity, a public identity” (Valiulis 1992, p. 43). Furthermore, for a newly formed state born out of counter-revolutionary struggle, the regulation and control of sexual behaviour created a sense of social stability for a state in flux and became a way of extending the hegemony of the newly empowered Catholic middle classes who emerged as the bearers of this stability and morality (Cronin 2012, p. 52). It was society’s most marginalised, poor, infant and female transgressing bodies that were incarcerated within a powerful nexus of church-state institutions:

We now know that during the twentieth century Irish society incarnated in Magdalene Laundries, Industrial Schools and Reformatories those bodies – of poor and working class women and children – which were designated as deviant and beyond the bounds of respectability. The confined and abused body of the young working-class woman or orphan silently but powerfully affirmed the healthy respectability of their youthful middle-class compatriots pursuing fulfilment and happiness outside, while serving an equally powerful warning that the privileges of middle class youth were always provisional and that maintaining healthy respectability required constant and anxious endeavour (Cronin 2012, 7-8).

This alliance between the Catholic Church and Irish State culminated with the 1937 Irish Constitution, a deeply conservative document, co-authored by Ireland’s founding patriarchs Eamon de Valera and Archbishop John Charles McQuaid (Cooney 2003, pp. 94-106). Within the 1937 Constitution, the institutions of marriage and family enjoyed a privileged position and the “special” role of women within the private home is elevated as an ideal. Article 41 entitled “The Family” states:

1. 1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable

- and imprescriptible rights, antecedent and superior to all positive law.
- 2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.
2. 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
- 2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.<sup>2</sup>

Reflecting on the gendered language employed here, Ruth Riddick observes how the term “woman” and “mother” are understood interchangeably in the text, as is demonstrated by the rhetorical shift in the Constitution from 2.1 to 2.2 (Riddick cited in Conrad 2001, p. 156). Defining for women a private role within the family, buttressed by legal prohibitions on divorce, abortion and contraception, implied that women’s key role is to reproduce the next generation of the family, and indirectly, to reproduce the nation itself. As Geraldine Meaney notes, “[i]n post-colonial southern Ireland a particular construction of sexual and familial roles became the very substance of what it meant to be Irish (1990, p. 6). Irish women’s reproducing bodies, in particular, would become the “medium through which competing national origin stories that focus on Irish national identity and cultural self-determination ... are imagined and expressed” (Oaks 1997, p. 133).

### **Abortion and Eighth Amendment**

Within the second half of the twentieth century, the long-term processes of social change which were evident throughout Western Europe, began to be felt in Ireland. These processes may be understood as part of “the rise of individualism”, a move from “self-denial to self-indulgence”, the “sexualisation of love” and a gradual shift in “the balance of power” in relationships between men and women (Inglis 2003, pp.128-129). Given the patriarchal character of the Irish State, it is unsurprising that the women’s movement had a profound effect on Irish society: “Irish women were struggling to break free from the language of Catholic Church teaching with its emphasis on motherhood and self-denial and to find a new language and way of thinking, writing and talking about themselves (Inglis 2003, p. 140). The movement was initially focused on undoing much of the discriminatory legislation that was introduced by the post-independent state, achieving significant gains, around work

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2      Bunreacht na hÉireann / Constitution of Ireland

and pay inequality (Connolly 2003, pp. 89-110). While access to contraception was a key issue, few women's organisations focused on abortion as a critical issue due to the tactical risk of conflating contraception with abortion in public consciousness (Connolly, O'Toole 2005, pp. 68-70).

The 1983 referendum to insert the eighth amendment was an attempt by the conservative right to manage and contain the political and social changes in the Irish State at the beginning of the 1980s (O'Reilly 1992). Conservative Catholic groups, fearing that abortion could become legal in Ireland in the future, sought to enshrine Catholic teaching on abortion in the Constitution. This concern was aggravated by the decision by the United States Supreme Court in 1973 to legalise abortion.<sup>3</sup> It was feared that a similar case would arise in Ireland and the Irish Supreme Court would decide that the right to marital privacy could be extended to include abortion. The Irish Supreme Court had already shown a willingness to protect marital privacy in the 1978 McGee case<sup>4</sup> when it found that the seizure of contraceptives imported from England violated constitutional rights to privacy in marriage. This judgement would later lead to the legalisation of contraception in Ireland. The agenda of those behind the amendment was also broader and part of a series of attempts to mobilise a conservative agenda against multi-denominational schools, 'immoral' TV shows, family planning clinics and rape crisis centres (O'Toole 2014). But it was around the issue of abortion that they found most traction and the Pro-Life Amendment Campaign (PLAC) was established in 1981 and began intensely lobbying leading politicians to call a referendum to insert an explicitly "pro-life" clause into the Constitution. As Lisa Smyth notes PLAC successfully managed to tap into a conservative anxiety around the 'impending transformation of hegemonic discourses of gender, sexuality and reproduction' through which the project of Irish nationhood had been constructed (2005, p. 67).

Those opposing the amendment, the Anti-Amendment Campaign (AAC) did not advocate for a woman's right to choose and focused instead on the harm the amendment would create for women by putting their lives at risk -- health was rarely mentioned -- and avoiding arguments around women's autonomy. However, as Mary Gordan, a leading member of the AAC comments, the anti-abortion common-sense of the time was so prevailing that even to oppose was considered radical (Gordan cited in Smyth, 2005, p. 67). By the end of the campaign "[t]he only result was that the vision of babies being killed in the womb was stronger in the minds of the Irish than the potential danger in which the amendment would put women" (Hug 1999, p. 154). The voices and experiences of women who had abortions were completely ignored. Indeed so taboo was the subject that the word abortion

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3 *Roe v. Wade*, 410 U.S. 113 [1973]

4 *McGee v. The Attorney General* [1974] IR 284.

was largely absent from the public debate with the media and politicians preferring the term “the substantive issue” instead of abortion (Cacciaguidi-Fahy, 2005). Following two and a half years of intense campaigning support for the amendment was unambiguous with two thirds of the electorate supporting it, albeit with a low voter turnout.<sup>5</sup>

The amendment which became Article 40.3.3 of the Irish Constitution states: “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.” The word “abortion” is not mentioned but by subordinating the life of a pregnant woman to that of the foetus she is carrying, it renders abortion illegal in all circumstances, except where a termination of pregnancy is considered medically necessary in order to save the life of the woman. The amendment is “uniquely misogynistic, in that it expressly sets up the right to life of both the pregnant woman and the foetus that she carries in conflict – anticipating that a time would come when somebody would have to decide between them.” (Bacik 2013, p. 22). The consequences of the eighth amendment would be profound for women living in Ireland over the course of the next three decades and, as we shall see, would be a contributing factor in the death of Savita Halappanavar in 2102. Emboldened by their victory, conservative campaigners next challenged the legality of abortion information and canvassed for prosecutions against organizations providing this information such as Students Unions and Women’s clinics. As one anti-abortion activist at the time stated: “in order to defend the right to life of the unborn, we must close the abortion referral agencies which are operating in Dublin quite openly and underneath the eyes of the law” (cited in Hug 1999, p. 157). This led to a series of prolonged legal cases that ultimately would be decided by the European courts.

During this period one of the key ways in which feminists and activists challenged Ireland’s abortion laws was by creating alternative networks and sources of knowledge. Ensuring that women living in Ireland had access to accurate information about abortion and how to access abortion services in Britain and Europe was a key strategy of Irish feminist activists throughout the 1980s and early 1990s (see Rositer 2009). Today, with the internet, social media and smart phones information is more easily available – though still not to everyone – so it can be easy to underestimate how vital this activist work was. Organisations such as Women’s Right to Choose, Defend the Clinics, Women’s Coalition, Alliance for Choice, Irish Women’s Abortion Support Group, Free, Legal and Safe, Pro-Choice Campaign all played crucial roles in challenging the restrictive laws, supporting women travelling abroad for abortions, and changing public opinion (see Smyth 2015). In this political climate

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5 The referendum was passed by a 66.9% majority with a voter turnout of 53.6%.

the right to choose could never be on the agenda with campaigners focusing on protecting women's access to information so they could travel to Britain and elsewhere for abortions. It would not be until February 1992 and the X case that a dramatic shift in public opinion on abortion would finally occur.

Struggles over abortion have always reflected wider dynamics at play in Irish society. Conservative forces found by the end of 1980s that they were unable to hold back the tide of secularisation. The collapse of Catholic hegemony which was long in the making found itself accelerated by the revelations around physical and sexual abuse, the Magdalene and religious institutions and the mother and baby homes. It was in this context in 1992 that the case of 'Miss X', a 14-year-old rape victim, entered into the public domain shattering the anti-abortion consensus that had dominated Irish society.<sup>6</sup> The parents of Miss X attempted to take her to Britain for an abortion and contacted the police to inquire if DNA from foetal tissue could be submitted as evidence against her rapist. Legal clarification was sought from the Attorney General who responded by seeking a High Court injunction against Miss X prohibiting her from leaving the jurisdiction. The story broke in the media, producing a public outcry with thousands taking to the streets in spontaneous protests, expressing horror at the treatment of the young woman. Protesters demanded not only that Miss X should be allowed to travel abroad but that she should be permitted to have the abortion in Ireland. This was a dramatic shift in public opinion for a country that less than nine years previously had voted to enshrine a constitutional right to life for the 'unborn'. The case was famously depicted on the front page of the *Irish Times* by the cartoonist Marty Turner: Miss X is depicted as young girl with a teddy bear on a fenced in map of the twenty-six counties of the Republic of Ireland. The caption drawing on nationalist iconography reads "the introduction of internment in Ireland ... for 14 year old girls ...". As Ruth Fletcher contends in "depicting the X case decision in terms of Ireland's virtual imprisonment of a young vulnerable child, the cartoon criticises the Irish state in terms that used to be reserved for the British state when it imprisoned Northern Irish republicans without trial" (2005, p. 384). Psychologically overwhelmed at the prospect of being compelled by the State to carry her rapist's baby to term, Miss X, was deemed to be suicidal. The injunction was appealed to the Supreme Court which voted, by a majority of four to one, to remove the injunction. The detail of the judgment illuminated the legal complexity that X case had created for pregnant women and girls in Ireland: all five justices held that the young woman had a constitutional protected right to an abortion if there was a "real and substantial" risk to her life and this, they ruled, included a risk of suicide. But, two of the judges noted that Article 40.3.3 did not permit a woman to travel abroad for an abortion in circumstances where it would not be legal within borders

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6 *Attorney General v X*, [1992] IESC 1; [1992] 1 IR 1

the State.

The X case demonstrated that while the eighth amendment did not create a total ban on abortion, it did require the State to protect the right to life of the unborn by ensuring that pregnant women did not leave the state. In response to the judgement, the government agreed to conduct a three-part referendum in November 1992. The referendums sought to reverse the Supreme Court decision in two conflicting ways; firstly it sought to introduce a new constitutional amendment that would exclude risk of suicide as grounds for obtaining an abortion in Ireland and, secondly, it attempted constitutionally to protect women's ability to travel abroad to access abortion even if those grounds were unlawful in Ireland. It also, in response to debate around abortion information, proposed to make it constitutional to access information on abortion services available abroad. That no opportunity was afforded to the electorate to liberalise Ireland's abortion laws was revealing. Yet, voters supported the right to abortion information and the right to travel abroad for an abortion; they opposed the proposal to remove suicide as grounds for an abortion.<sup>7</sup> The status quo was upheld and the hypocrisy that long characterised the State's attitude to women who need access to abortion was written into the constitution; women may be allowed to access abortion just as long as those abortions do not happen on the island of Ireland. However, the failure to outline in legislation the precise circumstances under which a termination of pregnancy was permitted when a pregnant woman's life was at risk would create legal and medical uncertainty and ensure that abortion would continue to be key political issue for the future.

### **An Irish Solution to an Irish Problem**

Within Europe, the standard approach to the lawfulness of abortion is to make access to abortion legal, at least in early pregnancy, either on a woman's request without restriction as to reason; for reasons of distress; or on broad socioeconomic or psychological grounds within a particular time-frame. This is the case in 25 of the 28 EU states; the only exceptions apart from Ireland are Poland and Malta (Singh *et al.* 2018). In almost all of the European states

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<sup>7</sup> The results of the three referendums were as follows: The Twelfth Amendment proposed that the possibility of suicide was not a sufficient threat to justify an abortion. This was rejected by a 65.35% majority; The Thirteenth Amendment proposed that the prohibition of abortion would not limit freedom of travel from Ireland to other countries where a person might legally obtain an abortion. This was supported by a 62.39% majority; The Fourteenth Amendment proposed that Irish citizens have the freedom to pursue and learn about abortion services in other countries. This was supported by a 59.88 % majority. Voter turnout for the three referendums was 68.1%.

where abortion is legal in early pregnancy, there are also specific grounds on which abortion can be lawfully accessed once the protected period has elapsed with these exceptional situations governed by law or regulations. In this context Ireland is a clear outlier in terms of abortion access; around 95 percent of women in the global north live in countries with more liberal abortion laws than women living in Ireland do. Abortion is also heavily restricted in Northern Ireland as the UK's 1967 Abortion Act has never been extended there, meaning that abortion on the entire island of Ireland is illegal in all but the most restrictive circumstances (Bloomer, O'Dowd 2014). Between January 1980 and December 2016, at least 170,200 women and girls travelled from the Republic of Ireland to access abortion services in another country<sup>8</sup>. The past seven years have seen the extended use of the abortion pill which has added new dimensions to the abortion question in Ireland as women are increasingly accessing abortion in early pregnancy using abortion pills. These pills are purchased online, and taken at home in a clandestine manner and are currently illegal (Sheldon 2016). Due to their illegal nature it is not possible to state with absolute authority how many women and girls take medical abortion pills but we do know working from information released by the providers of these pills that at least 1,748 women and girls living in Ireland ordered abortion pills from Women on Web in 2016 (Aikens *et al.* 2017) and a second provider Women Help Women reported that 878 women used its service in 2017, an increase of 190% on 2016 (Women Help Women 2018). Despite the highly restrictive nature of Ireland's abortion laws, and considering the fact that accessing an abortion outside the law carries a criminal penalty of up to 14 years, abortion is as much a reality for women living in Ireland as it is for their European counterparts.

The thirteenth amendment to the Irish Constitution, discussed above, protects a woman's "right" to travel outside of the State to access abortion. Irish law embodies unequal access to abortion as that access is dependent upon the socio-economic circumstances of the pregnant woman. The proposal was supported by the electorate, but little, if any, attention was paid to the suppositions embodied in this "right". It presupposes that every woman has the financial resources to travel or that every woman has the necessary documents to navigate the boarder of the state. Many of the cases that have ended up before the Irish courts have involved either poor, vulnerable young women or migrant women fleeing poverty and persecution. Migrant women living in Ireland are particularly vulnerable in terms of abortion

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8 This figure is calculated from data collected by the UK Department of Health Statistics and it refers to women resident in Ireland who travelled to both England and Wales to access abortions. The figure also includes women with Irish addresses who accessed abortion in the Netherlands between 2006 and 2013 and submitted to HSE Sexual Health and Crisis Pregnancy Programme.

access. Asylum seekers, in particular, are in a manifestly arduous position being left to languish for years in Ireland's notoriously brutalising system for asylum seekers known as 'direct provision'. Many of the most high-profile cases around the eighth amendment have involved migrant women of colour; Ms. Y, Savita Halappanavar and Aisha Chithira. Migrants account for 39% of all maternal deaths in Ireland, even though migrants only constitute 24% of the total population (Cullen 2015). The option to travel abroad for an abortion is often unavailable for a combination of economic reasons and visa restrictions (see Pollak 2018). Many asylum seekers and undocumented women cannot travel at all and for many the visa restrictions make it impossible to travel urgently<sup>9</sup>. Some communities report being scared to access pregnancy care due to the racism they experience in Irish society and some migrants may not have PPS [social security] number, meaning that healthcare is expensive or unavailable to them.<sup>10</sup> The case of Baby O<sup>11</sup> is particularly revealing of the deep hypocrisy that surrounds the Irish State's dedication to protecting the "right to life of the unborn". Ms O, was a 32 year old Nigerian citizen, who in 2002 appealed her deportation to Nigeria to the High Court and again to the Supreme Court on the grounds that she had become pregnant. Her legal representatives argued that her deportation contravened the eighth amendment guarantee to protect the "right to life of the unborn". Nigerian infant mortality rates are ninety per thousand births, compared to Ireland seven per thousand which could constitute a threat to the life of her 'unborn' child (Luibhéid 2013, p. 125). Yet the Supreme Court rejected her appeal and the judgment and arguments utilised by the State to ensure her deportation illustrate the racialised nature of the Irish State's "pro-life" position. The Supreme Court ruled that the state had the right to deport individuals who have been refused refugee status and that, in this context the "unborn" was not entitled to special rights and that the State's power to deport cannot be constrained by the eighth amendment. As Luibhéid correctly asserts, this was not the only interpretation of Article 40.3.3 available to the court; the court could have interpreted the eighth amendment as entailing a "positive duty on the part of the State" to enable all women to carry their pregnancies to term. But not only did the Supreme

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9 There is evidence that Irish Department of Justice and Equality facilitated some women asylum seekers to travel to England for abortions this process is arbitrary and unpredictable. Asylum seekers may only leave the jurisdiction with the consent of the Minister for Justice and Equality. It is a criminal offence not to have the Minister's consent, yet no formal mechanism exists for obtaining this consent.

10 Natalia Fernandez from the Migrants and Ethnic Minorities for Reproductive Justice presentation to the "Lawyers for Choice" Referendum booklet launch, Dublin 8 May 2018. Available at: <https://www.facebook.com/MERJIreland/videos/vb.166610913889388/248526812364464/?type=2&theater>

11 *Baby O v Minister for Justice, Equality & Law Reform*, [2002] IESC 44 (2002)

Court decline to interpret the amendment in this manner, it failed to explain, given the presence of the eighth amendment, why there was no duty to a minimum standard of care during pregnancy (Luibhéid 2013, pp. 140-141). It is difficult not to concur here with Fletcher who argues that there is "a racial stratification of foetal protection" by which some foetuses are deemed more worthy of protection than others (2005, p. 395).

## **Movement for Repeal**

Until 2018, no referendum to liberalise abortion laws has ever been put to the Irish electorate in any meaningful sense. As we saw above, in 1992, the electorate supported the right to travel and information but not to restrict suicide as grounds for a termination. In 2002, there was a further attempt to eliminate suicide as a ground for an abortion. In each case the electorate voted against further restricting abortion and in favour of extending the highly restrictive nature of abortion law to include suicide. The continuing failure of successive governments to outline in legislation the circumstances under which abortion is legal meant that from 1992 onwards women routinely found themselves caught up in legal processes in order to access the medical care that they needed. While the pro-choice movement continued to be active, they found themselves often forced to react to events, usually another "hard case", and rarely, if ever, in a position to be pro-active. The one exception to this was the Women on Waves<sup>12</sup> initiative mounted by pro-choice activists in 2001. A Dutch ship arrived with a portable surgery on board with a plan to offer abortions to women in Ireland by sailing into international waters. Historian Mary Muldowney who interviewed many of the activists from that period remarked: "the event had very little impact on national sensibilities. Given that more than 300 women called the helplines organised by the Irish activists ...and that they were clearly prepared to go on board a ship to be taken to international waters for that procedure, the level of desperation evident in those cases was strangely unacknowledged" (2015, p. 139). While these tactics produced limited progress in terms of legal change, this activism was essential in terms of highlighting the reality of abortion in Ireland. It would also prove to be an important blueprint for activism within the Repeal movement ten years later.

While pro-choice activism was evident in Ireland, it usually involved small numbers of dedicated activists organising in the face of political indifference and public apathy. Women who needed abortions continued to travel abroad or access the abortion pill illegally. However, in 2012 we can locate

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12 For a detailed outline of the Women on Waves visit to Dublin see "Ireland 2001" <https://www.womenonwaves.org/en/page/769/ireland-2001> .

a new phase in Irish pro-choice activism which would lay the foundations for one of the largest political mobilisations in the history of the Irish State; the referendum to repeal the eighth amendment. In January 2012, abortion activists organised to mark the twentieth anniversary of the X case judgement by calling for “X Case legislation” to be introduced (De Londras 2012). Clare Daly, an independent member of parliament proposed legislation to implement the X case judgement before the Dáil [Irish parliament]. The Bill was rejected: 110 TDs vote against the Bill with only 20 TDs voting in favour. In September 2012, activists organised for the first ever a “March for Choice” mobilising several thousand activists around the country. These protests were particularly significant as they represented the first time that significant numbers of people mobilised on an explicitly pro-choice agenda (Doherty, Redmond 2015, p. 273). While the majority of activists considered themselves to be pro-choice, they had usually stopped short of mobilising around the explicit demand fearing it would alienate Irish society which was understood to be conservative on the issue. This conservative apathy would be challenged by a tragic event and, unlike the 1992 X case, it would become impossible to contain.

In October 2012 Savita Halappanavar, an Indian woman living in Ireland, presented to a Galway Hospital miscarrying at 17 weeks. Doctors felt that due to the presence of a foetal heartbeat they could not treat her, citing the eighth amendment. She repeatedly asked for a termination but her requests were denied with one nurse telling her that “this is a Catholic country” (Holland 2013, p. 81). This proved fatal and she died of septicaemia. In the aftermath of Savita Halappanavar’s death a Health Service Executive (HSE) investigation was chaired by the British obstetrician and former president of the Royal College of Obstetricians and Gynaecologists, Sir Sabaratnam Arulkumaran. Addressing an All-Party Oireachtas [Parliamentary] Committee in October 2017 Arulkumaran stated unequivocally that the eighth amendment “played a major role” in her death (Holland 2017).

The death of Savita Halappanavar provoked a wave of national and international horror at Ireland’s punitive abortion regime. Again thousands gathered in a silent vigil outside the Irish Parliament once the story broke in the media. Days later tens of thousands marched in Dublin, with simultaneous demonstrations across the country, all chanting “Never Again”. The government were yet again under enormous pressure to act with protesters demanding not just the introduction of X case legislation but a referendum for the eighth amendment to be removed from the Constitution. In 2010, the European Court of Human Rights had unanimously ruled in the ABC<sup>13</sup> case that Ireland’s failure to implement the existing constitutional right to a

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13 A, B and C v. Ireland, No. 25579/05 Eur. Ct. H.R. (2010). In the ABC case three women challenged Ireland’s abortion laws at the European Court of Human Rights.

lawful abortion when a woman's life is at risk (i.e. X case legislation) violates a woman's rights under Article 8 of the European Convention on Human Rights. The government were obliged to respond but had successfully managed to stall for almost two years. But now with Savita's death they must be seen to act. An All-Party Oireachtas Committee was convened in January and May 2013 to investigate the implementation of limited abortion legislation with various experts and interest groups invited to participate. The end result was a highly restrictive piece of legislation, the Protection of Life During Pregnancy Act (PLDPA) 2013. The Act controversially created a differentiation between a physical threat to life and a threat to life due to mental health risk (suicide). Where the threat arises because of risk of suicide, three doctors — an obstetrician and two psychiatrists — must agree that the woman's life is at risk. If this panel did not agree, she could be referred to a further panel of three doctors. This created a situation whereby a suicidal, pregnant woman could potentially face a situation of being questioned by up to six doctors before accessing abortion. The cumbersome and deeply problematic nature of the legislation was confirmed in the summer of 2014, in a case involving a young migrant woman, Ms Y, who was pregnant as a result of rape and did not speak English. She became suicidal after being denied an abortion but her requests for an abortion were still ignored. Begging for an abortion, the women eventually went on hunger strike but instead of acceding to her request for an abortion that she was now legally entitled to under the PLDPA, an order to force-feed her was obtained from the High Court and she was eventually "convinced" into continuing her pregnancy until the foetus was viable at which point she was induced (Holland 2014).

The death of Savita Halappanavar and unworkability of the PLDPA galvanised the pro-choice movement into an intense campaign to pressure the government into calling a referendum to repeal the eighth amendment. The Abortion Rights Campaign, established in 2012, called for a referendum and the introduction of free, safe and legal abortion. In 2013, a coalition of activists, political organisations and NGOs established the Coalition to Repeal the Eighth Amendment to protect and respect women's lives, health and choices. The organisation would eventually represent over 100 leading groups and organisations across Irish Society. Activists mobilised through protests, art, street theatre and forms of direct action. In 2016 a group called Strike for Repeal organised around a global demand for women to strike on 8<sup>th</sup> March, International Women's Day (see Strike for Repeal 2017). Their actions inspired thousands of young people across the country to walk out of schools and Universities and they succeeded in shutting down Dublin city centre for a number of hours (Edwards, Flaherty 2017). As a direct result of this intense campaigning by pro-choice activists, the government found itself under increasing pressure to at least appear to act on the issue. In the summer of 2016 Taoiseach [Prime Minister] Enda Kenny, established

a Citizens' Assembly to consider the issue of the eighth amendment and to make a series of recommendations on abortion to Parliament. Members of the public, representative groups and citizen organisations were invited to make submissions. The Assembly heard from a wide range of medical and legal experts, advocates from human rights groups, as well as campaigning and civil society organisations. Most significantly of all the Assembly heard from women; women who had had abortions, and from women who had decided to continue with their pregnancies. This was first time in the history of the State's engagement with the issue of abortion that women's voices and direct experiences were publicly heard and listened to. Members of the Assembly credited hearing these experiences with helping to change or clarify their thoughts on the issue (Citizens' Assembly 2018). Following extensive discussions and deliberations the Assembly recommended that Article 40.3.3 of the Constitution should not be retained in full and that it should be a matter for Parliament to decide how to legislate on these issues. The Assembly members then made recommendations to Parliament that access to abortion should be available in the following circumstances: available up to 12 weeks without restrictions as to reasons; abortion should be available up to 22 weeks in cases where pregnancy is a result of rape; on the grounds of foetal diagnosis of serious disability; and where there is a risk to the health of the pregnant woman; abortion should also be available with no gestational limits on the grounds of a diagnosis of fatal foetal abnormality and where there was a serious risk to health or life of the pregnant woman. Following the Citizens' Assembly, a cross-party parliamentary committee was tasked with examining their recommendations. This Committee heard additional evidence from medical, legal and human rights experts. In December 2017, the Committee made the following recommendations; that Article 40.3.3 should be removed from the Constitution; that having an abortion in Ireland would no longer be a criminal offence; that abortion without restriction as to reason should be permitted up to 12 weeks; that abortion with gestational limits set by medical best practice should be permitted for reasons of fatal foetal abnormality or risk to health, including mental health, of the woman. These recommendations were then considered by the government in January 2018, who announced that a referendum to remove the eighth amendment would be held in the summer of 2018. The Minister for Health published a General Scheme of a Bill to regulate Termination of Pregnancy which set out the heads of the legislation that could be introduced if Article 40.3.3 was removed. The key points of the bill are: abortion would be legal on the grounds of a risk to the life of or a serious risk to the health of the pregnant woman but only until the point when the foetus is not viable; abortion would be permitted on the grounds of a foetal condition which is likely to lead to death before or shortly after birth; abortion would be permitted up to 12 weeks of pregnancy. On 25 May 2018 the electorate voted

in overwhelming number to remove the eighth amendment and replace it with a provision enabling the Oireachtas to legislate for abortion provision.

While the history of the campaign to repeal the eighth amendment has yet to be written there are a number of tentative conclusions that we can draw from the important referendum result of May 2018. Firstly, the campaign can be characterised as a genuinely grassroots movement that involved on-the-ground work by thousands of young people who are likely to be characterised by professional political operatives as “politically inexperienced”. Secondly, the campaign was run by women; from the leadership level of the national “Together for Yes” campaign, to the local campaign groups operating on the ground. This type of leadership and activism was largely invisible to media and political commentators who are conditioned to view political issues through a largely male, conservative, and party-political focused lens. As a result there is much work to be done on understanding the genuinely revolutionary implications of the campaign, both nationally and internationally. The third noteworthy feature of the repeal campaign was its timing. The campaign occurred at a moment when mainstream democratic politics have rarely seemed more fragile. As the Yes campaign maintained a modest lead in the polls throughout the campaign, political commentators were at pains to point out that Repeal could fall foul of right-wing populism, becoming the next Brexit or Trump. Instead, the repeal campaign embodied civil and political engagement at its best and for many became the embodiment of genuine participatory democracy. Finally, as expressed in the post-referendum feelings of euphoria and delight, Ireland, and particularly women living in Ireland, now have an opportunity to emerge from its painful and damaging past and to create a new future of just possibility.

## **Conclusions**

The Irish philosopher Richard Kearney has noted the importance and normative role of narrative in the development of a national identity: narratives create “a distinctive sense of cultural self-identification and self-imagining in the guise of narrative voice or viewpoint” and thus serve to “legitimate or delegitimize the political social and cultural tenure” of a community (1997, p. 189 n. 1). In other words, we need to understand and acknowledge both ourselves and our collective history. Extending this metaphor, one could argue that the campaign to repeal the eighth amendment forced Ireland to acknowledge both itself and its painful past. This campaign was a long time in the making; its roots can be found in early days of Irish second wave feminism and in the dark days of the 1980s when feminists and activists fought to support and empower women to make their own choices. For much of this time women’s voices and experiences of abortion were silenced

and ignored. Therefore one of the most notable and deliberate features of the recent campaign to repeal the eighth amendment was the inclusion of women voices and experiences of pregnancy and abortion. For a country whose entire history around sex and sexuality has largely been characterised by silence and shame this was remarkable. If, as Carol Sanger argues, citizens are not just subjects of the law, but “are also supposed to make law, directly or indirectly” then “we cannot advance how we and our representatives think about something – and certainly not how it should be regulated – until we start talking about it (2017, p. xiii). This conversation began with the X case in 1992 and was reignited around the tragic death of Savita Halappanavar. It started with what are sometimes known as the “hard cases”; cases involving rape, serious risk to health or cases of fatal foetal abnormality but it also quickly became about the everyday experiences of women who travelled abroad or took the abortion pill, because given their own particular set of circumstances, they simply did not want to be pregnant. For a country which had derived much of its identity from telling stories about women, the repeal referendum afforded women a unique opportunity to tell their own stories. Understood in this way, perhaps the result of the referendum should be less surprising that it initially appeared.

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