

## **race, identity, and the state after the Irish abortion referendum**

Paola Rivetti

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‘What a time, to live in Ireland’: this is what I have often thought in the past months, as the ‘abortion referendum’ approached. On 25 May 2018, Irish voters were called to cast their yes or no vote to the proposal of repealing the Eighth amendment to the Constitution. The amendment equated the life of the foetus to the life of the pregnant person, *de facto* criminalizing abortion. A vast majority voted in favour of removing the amendment, decriminalizing abortion and opening up the possibility for the Parliament to legislate on the matter.

‘This is an historical moment to be alive’, a friend commented just before the referendum, ‘we are undoing our national history and identity based on misogyny and the incarceration of women.’ It is hard not to agree with these words. In this short piece, however, I argue that expectations about ‘fixing’ national history or making bodily autonomy available to every woman in Ireland were overrated. While the referendum is an historical event marking a definitive change in the way in which women’s autonomy is seen in Ireland, I argue that there are starker continuities in the ways in which segments of the population continue to be Othered, making access to bodily autonomy difficult for racialized, non-white, non-settled women with little financial security. The referendum and the new law have been a missed opportunity to reconfigure Irish identity—which continues to rest upon being white, Catholic, and settled—and to move the lines of social and economic inclusion.

**herstory**

In her contribution to the ground-breaking publication *The Abortion Papers Ireland: Volume 1*, Anne Speed, a long-time feminist, contraception activist, and trade unionist, describes the role of the church in controlling women as core to the process of state formation in Ireland. ‘The victory of a repressive sexual morality imposed by the Catholic Church’, she wrote, was the ‘means of [...] curtailing the radical influence of secular Republican ideas. Sexual liberty was cleverly portrayed by the Church as a form of peculiarly British “godlessness” and used to harness legitimate anti-British feeling for the purposes of promoting Catholic ideology’ (Speed, 1992: 86-87). By the same token, a specific version of Irishness as white and Catholic, opposed to a British identity perceived as multi-cultural and Protestant, was promoted. This was done by removing from the collective memory the fact that the ‘creolisation of Irishness’ (Donnell *et al.*, 2015; O’Neill and Lloyd, 2009) has been an inevitable consequence of Ireland’s geography and being part of the British empire. In independent Ireland, anti-colonial and anti-British sentiments went hand in hand with the domination of the church in the provision of welfare and social services, which were turned into issues of public morality and hygiene.

The centrality of the control over women’s body in the process of nation building in history has been examined by a number of feminist scholars. Women’s sexuality becomes nationalized, a property of the nation, and women’s body—literally—becomes a body to be colonized, paralleling the national soil to be conquered and tamed (Maynard and Purvis, 2005). This is not peculiar to Ireland, of course. Women’s body served as the metaphor for the virtues of the nation state at different latitudes and during different periods, ranging from post-revolutionary and post-war reconstruction, to industrial modernization and conservative restoration. In their analysis of modernization in Egypt and the construction of the Iranian state after the revolution, Beth Baron (2005) and Arzoo Osanloo (2009) reveal how women’s appearance and conduct embodied the righteousness of the state and its efforts towards a larger

project of societal transformation. Women in both Egypt and Iran were covered or un-covered depending on the morality projected by the state.

Not all women, however, are impacted by state discipline equally. In this journal, Eithne Luibhéid (2006) reflected on how state formation in Ireland and the control over women created an hierarchy that worked towards the inclusion of those women who adhered to the mandates of the state and the exclusion of those who did not—single mothers, lesbians, sex workers, and others. Such lineages of exclusion were informed by racial elements too. In Ireland, while white and settled Irish women were encouraged to find an appropriate husband and reproduce, non-settled, Traveller women's sexuality and childbearing has often been securitized, controlled, if not prevented and demonised (Lentin, 1999). Furthermore, in Ireland, like in other countries, 'fallen' women were physically removed from the public sphere, locked up in institutions or hospitals (Pembroke, 2017).<sup>1</sup> Migration also had the role of sanitizing the public sphere from the presence of 'dangerous' women: the 'abortion trail' (Rossiter, 2009) and the hidden network of services available to Irish women seeking abortion in the UK represent another version of such physical suppressions. Through emigration and borders, then, the Irish state was apparently kept abortion-free and morally sanitized.

Women's reproduction lies at the core of the process of state and identity formation for pro-choice activists too. They see in the de-criminalization of abortion a milestone for the construction of a 'modern' Ireland. The idea of modernity, in fact, was core to the messaging of pro-choice groups. Frequent remarks were that Ireland could not be left behind by other modern and developed countries, and that it should not compare to what are considered to be under-developed countries but rather to advanced ones. The fight for reproductive justice is

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<sup>1</sup> See also the Magdalene Oral History Project, available at: <http://jfmresearch.com/home/oralhistoryproject/> [last accessed 10 January 2019].

then a prism through which the state is re-imagined and projected as a fairer and modern-day entity.

## **race**

How has race played out as one of the elements upon which the Irish state and society have differentiated amongst women, constructing hierarchies of them, and their reproductive ability? To answer this question, I would like to compare the cases of two women who suffered the effects of the Eighth amendment. While the Repeal the 8<sup>th</sup> campaign's mainstream rhetoric focused on Irish women going to the UK for terminations, the most atrocious consequences of the abortion ban were experienced by migrant women of colour—who, for one reason or another, could not travel. The women protagonists of the two cases, however, were not seen as equal by the wider public, for one was made highly visible while the other was largely invisible. Othering in fact does not affect the Other-ed equally, as it takes shape along multiple and distinct axes of identity. As Avtar Brah (Sian, 2014) argued, such distinctions are important because they reveal the modalities of power implicated in the historical processes that underpin the constitution of what we differentiate as a specific identity or social category. In this sense, intersectionality is not a grid on which we can map different subject positions, rather it is a shifting constellation of multiple flows of power: they change according to the context in which they operate.

Ronit Lentin (2013) discussed the moral panic that dominated Irish politics in mid-1990s, when Ireland became a country of in-migration. Women's reproduction was, once more, at the core of such a panic. The *jus soli* regime in place in Ireland, which granted automatic citizenship to any child born on Irish soil, was replaced by the *jus sanguinis* through a referendum in 2004. Core to the referendum campaign was the biological ability of migrant women to give birth to children who then became legally equal to any other Irish child, 'diluting' Irish identity (Oaks,

2002; Luibhéid, 2004). The introduction of the *jus sanguinis* alleviated Ireland's 'white anxiety,' but only partially. In fact, asylum seekers seeking recognition from the Irish state still constitute a potential 'threat' because of their attempt to access citizenship.

This is a necessary background to the cases of Savita Halappanavar and Ms. Y.<sup>2</sup> Both women of colour, Halappanavar and Ms. Y however occupied two very different positionalities *vis-à-vis* the Irish state. Halappanavar (who was refused an abortion despite lethal pregnancy complications and died in hospital in 2012) was a highly educated middle class 'economic migrant,' married to an engineer. Ms. Y was an asylum seeker, who arrived in Ireland in 2014 from a sub-Saharan African country after suffering traumas of war and rape—as the result of which she was impregnated. She unsuccessfully sought abortion in Ireland and the UK, and suffered immensely at the hands of Irish health and migration services. As noticed by Katherine Side (2016), the fact that Savita Halappanavar and her husband Praveen were of a middle class background, mobile on the international labour market, with proficient English, and able to navigate the Irish state helped shape a sympathetic public response. The Halappanavar family in fact did not only sue the hospital in Galway that took Savita in care, but also demonstrated the ability to use Irish media to demand justice and make their story public. This stands in stark contrast with the stories of Ms. Y and other migrant women: Applicant C (a Lithuanian migrant), Bimbo Onanuga (a Nigerian migrant, dead in 2010), and Aisha Chithira (a Malawian-Irish woman, dead in 2012), for instance, are less known and accessible to the wider public. Such visibility turned the death of Savita Halappanavar in 2012 into a watershed moment, giving momentum to a new cycle of mobilizations against the abortion ban. Halappanavar became the widely accepted symbol of the harm that the Eighth amendment can cause to women (Holland, 2018). Pro-choice state elites and policy-makers, along with activists,

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<sup>2</sup> For a background of both cases, see Specia (2018) and Holland (2014).

consumed her as the icon of why the Eighth amendment had to go, silencing and ‘normalizing’ the fact that she was a migrant. On the other hand, the story of Ms. Y hardly could be ‘normalized.’ She embodied a different, more ‘threatening’ type of female sexuality because of her unmarried status, young age, and because she embodied the typical ‘fallen girl’, raped and pregnant—the same profile of those Irish women who used to be removed from civil society and locked in Mother and Baby homes, Magdalene laundries, and similar institutions. Furthermore, her legal status and the economic hardship she experienced hardly resonated with the tenets of neoliberal Ireland, like the Halappanavar family did. While Savita Halappanavar became highly visible as an innocent woman victim of the unjust law, Ms. Y was made both ‘hypervisible and invisible’ (Mountz, 2015): hypervisible to the state because of her asylum status and economic dependency, but invisible in the public discourse and sphere both before and during the referendum campaign.

Ms. Y is not the only case that illustrates Ireland’s complex relationship with race and reproduction since the 1990s. Ms. C was a teenage member of the Traveller community, an Irish ethnic minority. Her case was particularly complicated because of her family’s changing position of support of (and later, opposition to) her decision to terminate her pregnancy, and also because of her Traveller identity. Ruth Fletcher (2005) discusses how the public response to the C case was influenced by this identity factor, highlighting the fact that popular sensibility seemed to shift towards a pro-termination attitude as media reports exposed the deprivation of the environment Ms. C lived in. She was depicted as a poor and voiceless person, member of a violent community. Strong of accepted racism against the Traveller community in Ireland, the public demand was that Ms. C was assisted to get an abortion as she was doomed to become a ‘bad mother.’ As Fletcher observed, Ms. C was considered unfit to reproduce Irishness during a period, the late 1990s, when the economic boom celebrated the modernity of the settled Irish population in opposition to the backwardness of the Traveller community.

## **the law**

Drawing on Brah, these three cases illustrate how the intersection between gender, race and socio-economic position vary according to specific contexts. Common elements exist, however, in the ways in which factors such as ethnicity/race and economic stability securitize sexual and reproductive life. What is the legacy in post-referendum Ireland of the different kind of exclusions that Ms. Y, Ms. C, and Halappanavar experienced? Abortion services are now nominally available,<sup>3</sup> but are they for all?

Before the referendum, the Irish author Anne Enright (2018) discussed in *The Guardian* the economic discrimination that underpins the ability of women to exert control over reproduction, with a specific reference to the option Irish women have to seek abortion in the UK. Enright wrote that ‘this is not so much an Irish solution (pretend it isn’t happening) as a middle class one. It depends on people having literacy skills, credit cards, supportive parents if needs be, an amount of spare cash’, shedding light on the difficulty experienced, on the other hand, by ‘the woman who has other issues, who has enough going on, who is depressed, or poor’. Enright’s article denounced the fact that women with reduced financial availability were somehow made invisible by the mainstream public discourse on abortion, which largely focused on Irish, that is documented, women going to the UK. Concomitantly, other powerful voices illuminated on the disproportionate impact of the Eighth amendment on migrants and people with insecure visa status (MERJ 2018), yet a serious risk was clear in that the pro-choice

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<sup>3</sup> Full text of the new law available here:

<https://www.oireachtas.ie/en/bills/bill/2018/105/?tab=bill-text>

campaign became dominated by middle class identity politics, speaking to white Irish women and relating to their difficulties only, leaving the rest behind (Holland 2018a).<sup>4</sup>

Questions of economic exclusion and race are rarely disjointed. Reflecting on the post-referendum legal scenario, Eileen Flynn, a pro-choice Traveller activist, shared her fear that while the referendum should be about

a legislation that will benefit all women, [...] I am afraid [...] [that] women from ethnic minority groups won't have access to abortion, [the] same access as women from middle class areas. We have to look at the cost, because cost is very important: some of us may not have the money to access abortion, some of us are working [badly paid] jobs and don't have the money to get abortions, some of us are on social welfare.

So who is going to support us, is [...] everyone going to have the same access to abortion? Because from today, [...] us, women here today have a hell of a long a way to go in Ireland. [...] at the moment I've learned a lot about history at the conferences I'm going to and [...] thinking where is the history of the women from

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<sup>4</sup> See also Shubhangi Karmakar's Repealist Twitter account at [https://twitter.com/Repealist\\_](https://twitter.com/Repealist_), and also Emma Q. Burns, 'Intersectionality and the Irish abortion rights campaign of 2018', available at <https://emmaqburns.com/2018/09/19/10thdss-intersectionality-and-the-irish-abortion-rights-campaign-of-2018/> [last accessed 5 February 2019].



ethnic minorities, we're not even in history books. And we're the ones who are making history.<sup>5</sup>

The new law has hardly erased fears that abortion will be difficult to access for disadvantaged social groups (M. Enright, 2018). In particular, significant obstacles are created by the mandatory three-day waiting period, conscientious objection, and continuing criminalization. Mandatory waiting period means multiple appointments with doctors, which people on precarious jobs, living in remote areas or institutions—like asylum seekers living in Direct Provision (DP)<sup>6</sup>—may find difficult to attend for economic and logistical reasons. In addition, the stipulation that the doctor who originally examined the patient must be the one to carry out the procedure creates dangerous delays in the case in which the pregnancy is close to the 12-week window that allows for termination. While objecting doctors are obliged to defer their

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<sup>5</sup> Excerpt from the speech at the workshop 'Learning from Migrants and Ethnic Minorities', 12 May 2018. Available at: <https://www.facebook.com/MERJIreland/videos/249860995564379> [last accessed 8 January 2019].

<sup>6</sup> Direct Provision (DP) is the Irish reception system for asylum seekers. It provides shelter and food directly to applicants. Asylum seekers are usually hosted in former barracks, hospitals, convents, many of which are located in extremely isolated areas. In DP centres, asylum seekers suffer from social isolation too: testimonies report that they are often prevented from leaving the centres and visitors are often denied entrance. See Asylum Archives (<http://www.asylumarchive.com>) and MASI-Movement of Asylum Seekers in Ireland (<https://www.masi.ie>). Asylum seekers are banned from the labour market in Ireland—although exceptions for specific employment schemes exist—and they receive an individual substance rate of 21.60 euro per week from the government.

patient to non-objecting ones, pregnant people with limited financial possibilities or who cannot travel because of legal restrictions to their mobility will find it difficult to reach pro-choice medical staff. This may be particularly true for people living in geographically isolated areas or in DP. This provision is worrisome considering that some counties in the country seem to have objecting doctors only.

The law criminalizes abortion providers instead of pregnant people seeking abortion—a post-referendum innovation. The risk of criminalization, therefore, may influence the medical staff's decision on whether to proceed with an emergency abortion or not, producing a 'chilling effect' that discourages doctors to act when it is necessary (de Londras *et al.*, 2018). Criminalization also will target all those who help pregnant people in a difficult situation get abortion pills. While this provision sounds reasonable, the obstacles listed above may make abortion non-accessible: in such a circumstance, the resort on informal networks providing abortion pills is of vital importance to people who need to terminate their pregnancy but cannot fulfil the terms of the new law. It is no coincidence that abortion pills were foremost utilized by people with little or no possibility to travel when the Eighth amendment was in place.

Once again, those who are more vulnerable in socio-economic terms, or who are made vulnerable by borders and visa status, in society run the highest risk to be left in the hands of state bureaucracy and services. In the past, the Irish state has governed female reproduction by creating hierarchies of women more or less fit to reproduce the nation, incarcerating the latter. After women became legally able to travel abroad to seek abortion in 1992, the state was relieved of such a burden and only those unable to travel were left in its custody. While it is too soon to assess how the disciplinary power of the new law will act upon specific social categories of women and citizens, the current regime stands in continuity with the past in the ways in which resourceful women (thanks to class background, financial security, or

nationality) will be able to navigate the abortion services, while the rest will continue to struggle with legal and bureaucratic loops at the hands of the state.

## **future**

The referendum campaign represented an opportunity to highlight the interconnection of the state and Catholic church's control over women's body, structural racism suffered by women and people of colour or Traveller background in the hands of institutions (whether DP centres or health services and maternity wards), and the perpetuation of socio-economic exclusions. The strategy of pro-choice activists to focus on abortion narrowly, instead of approaching the issue of reproductive justice intersectionally, laid the foundations of the continuous invisibilization in the law of those people who represent the 'Other' to the Irish population. Traumatic stories of abortions carried out in overcrowded DP centres or episodes of racism against Traveller women or women of colour in maternity wards circulated but uncoincidentally received little attention: they are unsettling, unpopular, and electorally risky. Looking at Irish herstory the presence of a 'human surplus' seems to cross the decades. By 'surplus', I refer to the materiality of the bodies that have been excluded or physically removed from official history and the public sphere—although they exist. They could not be 'absorbed' in the official space of state institutions, spoken in the public discourse and welcome among the 'purified' Irish population. Sex workers, single mothers, women and girls who have been raped, lesbians, trans, Travellers, disabled people and migrants: such bodies are a surplus to the sanitized citizenry project in post-independence Ireland and as such, they are not entitled of autonomy from the state. One of the ambitions of the referendum was to reverse this herstory. However, today's legal provision on abortion reveals the persistence of such a 'human surplus,' which was barely included in the referendum campaign and excluded from the post-

referendum regime of reproductive rights. Unsurprisingly, this ‘residual’ humanity does not seem to have a place in the project of (limited) bodily autonomy allowed by the legislation.

Although the existence of abortion services represents a massive positive change, the exclusion of non-white, non-settled, non-abled, and non-Irish bodies remains a constant. Unless feminist politics is capable of linking such invisibilities to the limitations to the reproductive independence of Irish citizens as designed by the law, and fight against both, activists will remain implicated in the reproduction of a state that differentiates and creates hierarchies of reproductive bodies.

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### **author biography**

Paola Rivetti is an Assistant Professor of Politics and International Relations in the School of Law and Government, Dublin City University.

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