

Abortion on the Island of Ireland

Crisis, Contradiction, and Colonization

by Michelle Brewer

L'auteure argumente que la position du mouvement pro-vie en Irlande est à prédominance catholique, ce qui permet aux Irlandais de se donner une identité post-colonialiste, mais ce faisant, colonise les femmes d'Irlande.

In 1992, Ireland had an absolute legal and constitutional ban on abortion. The ramifications of such a position became clear in what is

known as the "X" case, where a 14-year-old Irish rape victim was prevented from procuring an abortion in the U.K. She had been in the U.K. with her parents preparing for the abortion when they called the Irish Police asking if a DNA sample from the fetal tissue would be admissible in court to identify the alleged rapist. At that time the Attorney General attained an injunction against having the procedure invoking 1983's Eighth Amendment to the Constitution or Article 40.3.3, which reads:

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 pregnant girl and her family were warned to return to Ireland or she would face possible imprisonment. While abortion had long been illegal in Ireland, travel to Britain for the procedure had been the practice since laws there were liberalized in 1967. Ironically, this instance reflects the first time someone had actually been stopped from having an abortion outside the Irish jurisdiction.

When X and her family returned to Ireland, her parents took the case through the court system arguing that their daughter was suicidal and that her life should be guaranteed. The Supreme Court did lift the injunction calling on the equal right to life of the mother as the legal basis for their decision. X could now travel outside Ireland for the procedure. This move happened after much internal pressure and negative international media coverage. And while for some Irish the judgment of the X case was deemed a victory, its ambiguity as to what constituted a threat to life of the mother and who deemed it such left others on both sides feeling less than satisfied.

This unfortunate situation manifests the crisis that results from Ireland's ultra conservative abortion stance. Irish feminists have used it to argue not for abortion on demand, but rather for some sort of governmentally-regulated abortion for cases of sexual assault, incest, and intense psychological hardship.

The Eighth Amendment of 1983 or Article 40.3.3 had been invoked in two previous abortion cases in the mid-'80s. First, in 1985, the Society for the Protection of the Unborn Child (SPUC) commenced civil proceedings against two Dublin non-directive counselling agencies, or abortion referral services as SPUC dubbed them, arguing that the dissemination of information on abortion services available in the U.K. interfered with "the constitutional guarantee afforded the unborn" (Riddick 7).

The second abortion case, also initiated by SPUC, involved women's right to travel. The society argued that because of Article 40.3.3 a woman should be stopped from leaving the jurisdiction if it were thought she was travelling to have an abortion. The Irish Court system's judgments continually found in favour of SPUC in



Rita Duffy, "Becoming," oil on wax paper, 116 x 122 cm, 1995.

these cases, subordinating women's freedoms of expression (access to information) and movement to the right to life of the unborn. In the wake of these decisions, the government allowed for extreme measures to protect that right. British magazines and newspapers were seized when they contained abortion information, and copies of *Our Bodies, Our Selves* as well as British Telephone Directories were removed from public libraries

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for the same reasons. With respect to travel, the government considered administering mandatory pregnancy tests to any woman travelling who was of child-bearing age and conducting examinations on the pregnant women upon their return from abroad (Reid).

After exhausting the avenues in the Irish Court system, both cases' defendants appealed to the appropriate higher European Court by virtue of Ireland's membership in the European Community. And in both cases the higher courts found in favour of the defendants arguing that the domestic courts' rulings exceeded what was necessary in a democratic society. They noted that such measures were seemingly ineffective in preventing abortion, and moreover were dangerous to women's health (van Gerven qtd. in *SPUC v Grogan*).

Disturbingly, the judgment of the travel case was in place when the Attorney General ordered the injunction in the X case. That is, the European Court ruling, which stated particularly "Irish women have an explicit right to travel freely within the EC to avail of abortion services" (qtd. in Riddick 10) was ignored. And when the Irish Supreme Court judgment did come down in the X case, no reference was made to precedent in European law. It relied instead on a slightly modified interpretation of Article 40.3.3 safeguarding the "equal right to life of the mother." In any event, it was not made clear whether

an Irish woman can legally demand an abortion in Ireland where her life is at risk. What did result is that she can travel freely for the procedure.

The legal wrangling on abortion in Ireland has focused on the basic rights and freedoms guaranteed in a liberal democratic republic: the freedoms of expression and movement, and the right to life and bodily integrity. Although these rights are guaranteed to all citizens regardless of sex in the Constitution of the Republic of Ireland, they can be in conflict. In this circumstance the guarantees cannot be universalized to both the woman and the fetus. And where that conflict is between a woman and a fetus, in Ireland, the unborn's right to life has been considered primary. There are serious implications and contradictions that result from the abortion situation in the Republic: for example, can the Irish Constitution uphold its obligations to the equal citizenship and status of women? Further, can Ireland uphold the ideals of the European Union, which it has agreed to by its membership, when it yokes together the right to life of the woman and fetus as it does in Article 40.3.3? I argue that it cannot.

Contradiction

I am in agreement with Attracta Ingram's argument that the equal right to life of the pregnant woman and fetus are not extendable to both if women are to be granted full citizenship. She claims:

Some right of abortion is the norm in almost all western liberal democracies. This is not a symptom of their basic evil and corruption. It is an inevitable outcome of their attempts to come to terms with the inclusion of women as equals in a free society. (149)

Ireland is a liberal democratic republic, and as such guarantees its people the privilege of determining what is good and right in their own lives so long as those decisions do not in-

fringe on the rights of others. If people choose to live their lives in accordance with a particular religion (or if they do not) that determination is free for them to make as citizens with rights, but the realm of the moral is to be kept separate from the realm of the legal.

In the case of a pregnant woman wanting an abortion, her freedoms and decisions can mean harm to the fetus. But the fetus is in a different position than a separate individual because it lives inside the body of a woman. Consequently, both their rights cannot be guaranteed. Ingram argues that where they conflict, because democratic society grants final say over their bodies to the individuals themselves, it is for the pregnant woman, and for no one else, to decide whether to have an abortion:

[The Irish State] cannot make out a case for limiting the rights of women to control their own bodies without denying their equal citizenship with men in the matter of individual liberty. And it cannot appeal to a right to life of the foetus which trumps the right to reproductive control of the mother without taking sides on a *moral* issue which is bitterly contested. We do not have a "shared understanding" on the matter of the foetus. If the *state* does outlaw abortion (rather than regulating its proper practice) it sets itself up as a moral arbiter in a matter on which it is no more competent to judge than in the case of "true" religion. The foundations of the modern state in respect of individual liberty and equality simply do not support the attempt to impose contested religious, philosophical or moral views. [my emphasis] (150-1)

This stance is echoed by Prince Edward Island's own Justice Mark MacGuigan in his book *Abortion, Conscience, and Democracy*. Here the self-identified practising Catholic argues that the legal realm has no right

to regulate therapeutic abortion until after the fetus is viable: that is, could live as a separate individual. Until that time abortion for him is only an issue for a woman's conscience—freedom of conscience for MacGuigan is the most sacred of the democratic ideals.

Ingram argues that Article 40.3.3 is completely inconsistent with women's equal citizenship with men. For her, the only way to reconcile its

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inclusion in the Constitution is to view women's primary role as that of motherhood:

Vesting the unborn with an absolute right

to life can be thought consistent with the mother's equal right to life only if our image of woman confines her to a natural and social role of reproduction and nurture. If she has a duty to permit the unagreed use of her body by the unborn no matter what, its claim against her has to look like it doesn't treat her as a mere means but as an end also.... The trick is performed by supposing that her natural human identity and proper social role is reproduction. Thus she is not used as a means toward an end outside herself. Reproduction is her dominant end. Her right to life is to do what she needs to fulfill her given natural and social role. (154-5)

This claim is supported when we consider that the two references made to women in the Constitution are both under the heading "family" where, for example, it states that women provide support to the state as mother in the home "without which the common good cannot be achieved" (Article 41.2.1).

Both the pro-family stance of the Constitution and the pro-life stance of Article 40.3.3 are indicative of a Catholic ethos that pervades the Irish

State and its laws. I have endeavoured to show that such a moral mandate regarding abortion contradicts the democratic one. But, I assert that there are contradictions inherent in the way the state attempts to meet its moral goals. As far as pro-family goes, if law enforcement was considering intrusive pregnancy testing as a means of preventing women from travelling to obtain abortions, then perhaps they should consider DNA testing for paternity and garnishing fathers' wages so that single mothers and their children are not obliged to spend their lives in poverty.

Further, with respect to the pro-life stance, it is debatable whether a ban on abortion safeguards the right to life of the unborn. In spite of the Constitutional ban, women in the Republic of Ireland continue to have abortions. They travel at a rate of 80 per week—that is over 4,000 every year (Francome). This estimate is considered conservative as many of the Irish women travelling to Britain to procure the procedure do so under false identities out of a sense of fear and shame. As Irish feminist Anne Speed argues in her paper "The Struggle for Reproductive Rights," there is abortion in Ireland, but it physically takes place in Britain.

Northern Ireland—the six counties on the island of Ireland that elected to remain a province under British rule while the other 26 formed a free state in 1922 and later became the Republic of Ireland—has interesting statistics as well. While the U.K. saw the liberalization of its abortion law 1967, Northern Ireland vetoed the act and now the women there find themselves in much the same position as their southern sisters. The Northern Ireland Abortion Law Reform Association (NIALRA) claims that 15 of every 100 women in their province will have an abortion in their lifetime.

The NIALRA also claims that the abortion rate in Northern Ireland is comparatively higher than the rates in England, Scotland, and Wales, and argues that the lower trend in the rest of the U.K. is owing to the liberaliz-

ing of attitudes that accompanied the British Abortion Act. To put it another way, the association counters the claim that a ban on abortion reduces the abortion rate:

As international comparison shows, the argument that [access to abortion services will lead to an increase in the number of women availing themselves to it] is not valid. In fact, when seen in the long term, almost all countries which have legalised abortion have experienced a sharp decrease in abortion figures. The reason for this decline is related to the greater knowledge of and access to contraception and a more liberal climate of opinion which has accompanied the legislation of abortion. (NIALRA 46)

While the claim as noted may be unsubstantiated with empirical data, there is support for it from other quarters. The country with the lowest abortion rate in the developed world is the Netherlands, which "is also home to some of the most socially permissive attitudes in the western world," (*Dateline*) and which provides women access to abortion. On a recent edition of *Dateline*, Dutch experts claimed that the country lowered its abortion rate through "a commitment to teach sex education and

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make contraception widely accessible" (*Dateline*).

History in Ireland has shown that a ban on abortion can actually lead to an increase in the rates of illegitimacy, infanticide, and self-induced abortion.¹ Moreover, it is harmful to the health of women insofar as they are forced to partake in "abortion tourism." That is, women must travel

abroad to avail themselves of services. As a result, they procure abortions later in the term of pregnancy thus risking complications, and they do not receive follow-up medical attention (IWASG; Irish Family Planning Association; Wadhera and Millar). In Ireland, the overall abortion rate continues to increase while in Northern Ireland it stays the same. Not surprisingly, both the Republic and the North have rates of second and third trimester abortions almost twice as high as England, Wales, and Scotland.

At this point, the abortion crisis should be clear along with its inherent contradictions. The question then remains, if appeals to the Catholic pro-life/pro-family stance cannot fully explain the Irish abortion situation, how then can it be best explained? From here I wish to embark on an analysis that examines abortion within the broader perspective of reproductive rights and the status of Irish women framed within the context of Irish colonization.

Colonization

The Columbia Dictionary of Modern Literary and Cultural Criticism says that a post-colonial era is marked by "conflicts and contradictions," and that efforts of the state are centred on the creation of new state structures and national identities. I contend that the newly emerging state of post-1922 Ireland used Catholicism for these ends. Anne Speed has suggested:

In an underdeveloped society, the achievement of political independence (or partial independence in this case) does not bring into spontaneous existence the features stultified by imperialism. In fact, a vacuum exists, into which steps traditionalist



Rita Duffy, "Eleventh Night in the Jubilee," charcoal on paper, 1200 x 900 cm, 1988.

conservative forces who have been associated—in public consciousness if not in fact—with the nationalist movement. These social forces, in Ireland the Roman Catholic Church, are ones whose institutions were encouraged or at least benefited from forms of sometimes malign toleration during the last period of imperialist control. (85)

I argue, therefore, that the tenacity with which the Republic of Ireland clings to the imperatives of the Roman Catholic faith with their legal enshrinement in the 1937 Constitution (in this case the ban on abortion), is motivated by a desire to etch out a national identity separate from its historical colonizer. As a state, Ireland has sought to highlight and institutionalize the way in which it differs from Britain: namely through its Catholic religious identity. But this attempt at national distinction

has unfortunately come at the expense of Irish women. It is my contention that the Republic controls and colonizes women via their bodies insofar as they have been made to be mothers in the new state.

After 700 years of colonization ending in 1922, the Irish people set upon a period of "nation building," which reached its height in the adoption of the Constitution of Ireland in 1937. During that time, many changes took place in the state's infrastructure with regard to sexuality. As Anne Speed argues:

[The measures enacted during the 1920s and 30s, which included the censorship of books and films and the outlawing of contraception] could be portrayed as a means of protecting Irish particularity—the equation of nationality and religion being one of the ideological tenets of the new state. (87)

Interestingly, even the church capitalized on this connection. Speed explains: "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 purpose of promoting Catholic ideology" (86).

Irish feminist Pauline Conroy Jackson argues that regulation of abortion and contraception has been historically implicated with the control of woman. She claims that the abortion laws of Britain, France, and the U.S. in the 1860s were the outcome of both the professionalization of medicine and midwifery, and the tactic used against the growing strength of the women's emancipation movement—both of the 1850s. This control, vis-à-vis abortion, took hold in Ireland legally in 1861 when the British state enacted the Offences Against

the Person. The Catholic Church only followed suit in 1869. Before that, it had permitted abortion early in the term of pregnancy. In Conroy Jackson's words: "The Catholic Church was in this sense a moral follower and not a leader in patriarchal trends" (185).

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banned contraception, and in the Constitution, which gave primacy to the family. Further, we can see its endurance in the events that precipitated the 1983 Constitutional Ban on abortion (a ban, incidentally, which is completely redundant to the 1861 law, and), which, it has been argued, has its roots in the earlier partial legalization of contraception that took place in 1974. Ruth Riddick, director of the Irish Family Planning Association, quotes Brian Girvin to explain this connection: "The [Pro-Life Amendment] campaign [which led to Article 40.3.3] was a riposte to the *secularising* tendencies which had appeared so strong throughout the 1970s" (6). She claims that it worked as such because "... abortion appeared to be the issue around which the maximum support for traditional values could be generated" (6).

The Irish anti-abortion stance then is more than religiously motivated, it is also politically and nationalistically motivated. Catholicism has been a means to an end for the Irish people in that it has allowed them a peculiar identity. Furthermore, the bans on abortion and on contraception fit into the nation-building equation not only because they were/are Catholic practices, but also because they led/lead to an increase in the numbers of Irish Catholics or the "new" national identity. In doing so, I argue, the bans act as a sort of national eugenics strategy. Such a eugenics interpreta-

tion is affirmed by sociologist Sylvia Walby:

While struggles between men and women are determinant of reproductive control [that is abortion and contraception], they are not the whole matter. Other, both specific, professional constituencies, largely doctors, and nationalist and racist interests, are significant also. In short, reproductive control cannot be understood outside the intersection of class and race groupings as well as patriarchal ones. (80)

Irish feminist Ursula Barry contends that the abortion question has been of "unparalleled intensity" in recent Irish political history. The only issue that could rival its intensity for her, not surprisingly, is the national question—that is, the issue of a separate Northern Ireland.

The Columbia Dictionary defines colonialism as "the direct political control of one country or society by another." I extend this definition to cover the "direct political control of one gender by another." Through enshrinements of the pro-life/pro-family stance in the laws and Constitution of Ireland, where they have been made mothers first and citizens second, Irish women are themselves colonized.

The contradictions in, on the one hand, assigning to women the role of mother and giving primacy to the family, and, on the other, granting women citizenship have been discussed as far back as ancient Greece. Plato realized in *The Republic* and *The Laws* that women's mandatory position in the family affected her ability to participate fully as citizen (see Okin). Such conflicts were as vivid in 1937 when the new Constitutional promotion of the family meant married women were from then on barred from working in the civil service—a ban which lasted until 1972. In addition, they were banned from being on juries as their participation could interfere with their role as mother. This prohibition only

ended in 1974. The legal and constitutional changes in the first 15 years of post-colonial Ireland also meant a ban on contraception and divorce. It wasn't until 1979 that the contraception law was completely liberalized. And it was only in November 1995, after a narrow victory of 0.5 per cent during a national referendum, that divorce was made legal.² The Constitution continues to prohibit domestic abortion. Oddly, the Irish, working so hard to separate themselves from the British, rely on Britain to do their "moral laundry" with respect to abortion (Smyth 1992a, 21).

Ironically, under British rule, pre-1922 Irish women, together with their counterparts throughout the British Isles, had gained some measure of autonomy with the availability of contraception and limited divorce. Although these were rolled back in an independent Ireland, it is important to note that Irish women put up a strong resistance to the 1937 Constitution, which, consequently, only passed into law by a slim majority in a national referendum.

Of course, we must place these Constitutional tenets in the wake of 700 years of colonization, where the Irish were robbed of their language and their land, and in the wake of a potato famine that had less to do with a lack of food and more to do with economic policies and overt oppres-

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sion. Ireland was projected to have a population of over 9,000,000 for 1851. In actual fact it had a population of 6,500,000. Because of the famine conditions over 1,500,000 emigrated, and nearly 1,000,000 died. Emigration continues to be a way to deal with economic hardship in the Republic, which has a population of only 3,500,000 today (Kee). As Ursula

Barry reminds us: "Historically, attitudes to reproduction in Irish society have been bound up with our experience of famine, disease, and emigration" (117).

This notwithstanding, the Irish Women's Abortion Support Group, which works with Irish women travelling to the U.K. for abortions, says: "It is clear that women in Ireland are not letting the political and social situation get them down; they are finding ways to do what they need to do" (47). They are empowering themselves. They have protested, set up underground information services on abortion, and provided support at all points of the journey across the Irish Sea. And, they have Master's programs in Women's Studies in nearly every university in the Republic.

Moreover, this spirit has a long history. Nineteenth-century Irish women both fought vigorously for women's emancipation and played key roles in the events leading up to Irish independence. Anne Speed explains that:

Prior to independence for the 26 County state, women had been active in the suffragette and nationalist movements. They saw no distinction between the fight against the British occupation and the fight for independence and women's rights. (86)

Unfortunately, the feminist mandate was subordinated to the nationalist one.

I believe that Irish women through their reproductive capacities are being used by their state, wittingly or unwittingly, in the project of the creation of an Irish national identity. While the goal may be worthy, we are seeing Ireland's own imperialism with its colonization of Irish women. It is my hope that the women of Ireland realize that they can fight for their rights as women without negating their national identity. Appropriately, this view is affirmed in the words of one of Ireland's most eminent nineteenth-century feminists and nationalists, Hanna Sheehy-Skeffington:

To fight men's battles for them and to neglect those of women has always been regarded as truly womanly, though when men fight for their rights on the broad basis of humanity they are not accused of selfishness. The cause of an oppressed group is fully as great as that of an oppressed nation and deserves no taint of narrowness. (*Irish Nation* qtd. in Levenson and Nattersted 29)

Given the history of the resilience of many Irish women, I trust that the fight for their rights including the right to have access to safe, legal, domestic abortion will continue.

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¹See selections in Smyth 1992b.

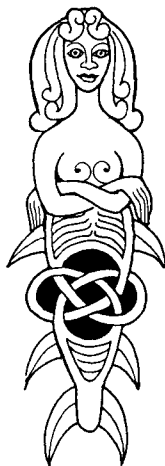
²Given the thesis of this article, I argue that the Irish divorce referendum was implicitly a nationalist one. As such, it is interesting to note that the 0.5 margin is narrower than the one per cent margin in the explicitly nationalist Quebec sovereignty referendum in October of the same year. Richard Kearney, in his book *Post-Nationalist Ireland*, affirms this nationalist interpretation. He claims that "the strong influence of the Catholic Church in matters of the state was witnessed as late as the 1995 knife-edged referendum on divorce" (15). In addition, "The relationship between nationalism and Catholicism resurfaced in ... the heated debates on abortion information and divorce in the 1990s, particularly as they affected the Irish constitution. The narrow passing of the controversial Divorce Referendum in November 1995, was a particularly significant

moment in this ongoing process of Irish "self-definition" (Kearney 33).

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