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**Intersectionality, Repeal, and Reproductive Rights in Ireland**

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Much has already been written about the 2018 referendum to repeal the 8th Amendment of the Irish Constitution, as a result of which the near-constitutional ban on abortion was removed from the Irish Constitution, paving the way for the legalisation of abortion in the Health (Regulation of Termination of Pregnancy) Act 2018.[[2]](#footnote-2) From 1 January 2019 abortion has been legally available without restriction as to reason up to twelve weeks, and on restrictive, medically indicated grounds after that point.[[3]](#footnote-3) Although—as has widely been acknowledged[[4]](#footnote-4)—this law has multiple and serious faults, it does bring Irish law far more closely in line with both comparative legal practice and best medical practice than was previously the case. The passage of the law and the winning of the referendum that enabled it were significant and rightly-celebrated landmarks for reproductive rights in Ireland. For the 12,976 days of its operation—from 7 September 1983 to 18 September 2018, or all but 1,022 days of my life up until then—the 8th Amendment was a legal artefact of the misogynistic, proto-nationalist merging of church and state authority that lodged itself inside the body of everyone capable of pregnancy in Ireland. Following repeal that is no longer the case and that is, rightly, something to celebrate.

However, along the way—and especially during the formal politco-legal processes of referendum and law-making—the repeal campaign found itself confronted with significant challenges to the maintenance and enactment of the meaningful and reflective praxis of intersectionality. It is that which I focus on in this contribution. The law that emerged from these victories left many behind, especially those for whom multiple marginalities intersect to make domestic abortion travel difficult if not impossible, those whose gender presentation does not match a ‘female’ marker assigned at birth, those with reduced access (for mobility or other reasons) to transportation and healthcare, and those racialised by both the containment practices of Irish refugee and immigration law and the persistent partition of the island of Ireland.

In this chapter, I reflect on the ways in which reproductive activism might be said to have failed in its intersectionality during the repeal campaign and, in particular, on the ways in which the formal processes of constitutional law reform that had to be negotiated in order to achieve meaningful reform and liberalisation of abortion law shaped these failures. In doing so, I write from the perspective of someone involved to some limited degree with the campaign (both informally with the civil society campaign and somewhat more formally with certain political and government figures who intervened in the referendum), someone who engaged in sustained campaigns of public legal education during the referendum campaign (primarily with my colleague Máiréad Enright[[5]](#footnote-5)), and someone who continued to work post-referendum to try to improve the abortion legislation as it made its way through the Houses of the Oireachtas (primarily with colleagues in Lawyers for Choice[[6]](#footnote-6)). I thus write—as others have already done[[7]](#footnote-7)—from the strange insider/outsider position that both enforces an ethical obligation for critical self-refection[[8]](#footnote-8) and potentially blinkers one from some important insights. I write also as someone who thinks it important to offer correctives to solely celebratory narratives of repeal, recognising that the rightly-lauded success of the campaign carried with it significant costs.

My intention in this chapter is not to contribute in any substantial way to our evolving understanding of intersectionality and intersectional practice, but rather to reflect on the ways in which a self-avowedly intersectional and intergenerational activism for abortion law reform in Ireland may have fallen short of that avowel within the formal process of constitutional law reform as it operates in Ireland. My contribution is, then, intentionally modest; it is a, not *the*, telling of the referendum campaign, and it uses meaningful commitment to intersectionality as a benchmark for evaluating that campaign. In doing so it does not disavow or seek to underplay the importance of formal constitutional and legal change; indeed, one might argue that since the early writings of Pauli Murray[[9]](#footnote-9) the germ-seeds of intersectionality as a form of legal argumentation were planted in formal constitutional argumentation and aspirations for legal change, notwithstanding our epistemological knowledge that legal change alone does not address structural and embedded disparities in power and agency, and their multiple and variated instantiations in different lives.

In this chapter I proceed in three parts. First, I will reflect a little on the referendum campaign itself and particularly on some of the tactical maneuvres of the campaign relevant to the question of intersectionality. Second, I will illustrate some of the ways in which the new law and its operation fail adequately to deliver reproductive justice to all. Third, I will reflect on the difficulties of intersectionality in constitutional referendum campaigns.

**Repeal: The Referendum**

The formal institutional story of the referendum to repeal the 8th Amendment starts with the Programe for Partnership Government in May 2016, which led to a Citizens’ Assembly to consider, among other things, repeal of the 8th Amendment. That Assembly, much lauded by some political scientists in particular, resulted in a wideranging set of recommendations including to repeal the 8th Amendment and introduce new law that would make abortion lawfully available in a wide set of circumstances.[[10]](#footnote-10)

Although the outcome of the Assembly was especially welcome, the proceedings themselves were problematic; there was very little engagement with the realities of reproductive life for women of colour, migrants, Traveller women, women with disabilities, trans people, and women living in situations of reproductive coercion. Reflecting a fixation with law and legality, lawyers were invited to address the Assembly on every one of their four substantive meetings on the 8th Amendment.[[11]](#footnote-11) Nobody seems ever to have been asked to address questions relating to migration, race, ethnicity, language, sexuality, disability or gender identity as they apply to and arise in respect of access to abortion care. The Assembly was designed with a literal adherence to a notion of balance that meant any lawyers who had expertise in abortion rights were not invited to address it; instead, ‘general’ constitutional lawyers played that role. Furthermore, ‘balance’ was interpreted to ensure that anti-choice speakers received equal time to pro-choice speakers, even when their presentations were based on abortion myths or made by representatives of discredited organisations such as Youth Defence, Every Life Counts, and Women Hurt. The citizen members, however, insisted in the end on a number of important interventions: they asked to be addressed by people with direct experience of the 8th Amendment, i.e. women who had and who had not accessed abortion.[[12]](#footnote-12) They insisted on the rewording of some propositions at the time that votes were being taken, largely to make them less foetocentric and attempt to break from the language and strictures of the 8th Amendment that appeared greatly to influence the propositions being advanced by the Assembly’s expert team. Ultimately, they made a set of recommendations that went far beyond what anyone had really expected, including accounting for socio-economic deprivation as a basis upon which one ought to be permitted to access lawful abortion.[[13]](#footnote-13)

Following the Assembly a special parliamentary committee—the Joint Oireachtas Committee on the 8th Amendment of the Constitution—was established to consider how to give effect to the Assembly’s recommendations. This Committee also heard from a large number of experts and, unlike the Assembly, lawyers with well-established expertise on abortion law regulation were invited to address it and questioned by its members.[[14]](#footnote-14) However, like the Assembly, it failed to hear from experts who could engage directly and, ideally, from a basis of experience with the diffiuclties faced by marginalised communities and with the intersectional effects of restrictive abortion laws.[[15]](#footnote-15) Its recommendations were less radical than those of the Citizens’ Assembly, but nevertheless significant. Like the Assembly it recommended constitutional change following by a reasonably liberal legislative framework, and its recommendations were debated in the full Parliament before being sent to the Cabinet.[[16]](#footnote-16)

At Cabinet level a futher process of consideration was undertaken, resulting not only in an agreement to hold a referendum on the 8th Amendment (to remove it and replace it with a text empowering the Oireachtas to pass abortion law), but also in a ‘general scheme’ for post-repeal legislation.[[17]](#footnote-17) The General Scheme was intended to provide a reasonably coherent set of proposals to the People about how the Government intended to legislate if the referendum was successful. Publishing such a scheme in the course of a referendum is not entirely unusual in Ireland; it is often considered an important step in assuring the electorate about what might follow constitutional change although, of course, there is no *legal* (as opposed to political) obligation to propose law that tracks the published general scheme. In the case of the 8th Amendment, the general scheme became an extremely important focal point in the campaign, especially for the ‘No’ side which attempted to argue that the Scheme showed how repeal would lead, variously, to the legalisation of abortion on the basis of foetal disability (it would not), abortion ‘up to birth’ (it would not), and the introduction of a law comparable to the Abortion Act 1967, operated in most of the United Kingdom (it did not).[[18]](#footnote-18) The reality, though, was that the General Scheme included limitations that could not be traced back to either the Citizens’ Assembly recommendations or the Joint Oireachtas Committee report. For example, under the proposed new law women seeking abortion in early pregnancy would be required to undertake a mandatory waiting period. Furthermore, early pregnancy was to be defined as 12 weeks LMP; a considerably shorter period than 12 weeks gestation. In Cabinet, it seems, political realities had resulted in compromises designed to get key socially-conservative members of government on board, especially the Tánaiste, Simon Coveney, who publicly supported repeal on the basis that these compromises assured him the law would not be too liberal.[[19]](#footnote-19)

Even before the Bill was finalised, then, there was a fairly good sense of what the new law would provide. It was, without question, welcome in many ways, especially in ensuring a period of abortion without restriction as to reason (up to 12 weeks LMP) and ensuring that potentially damaging provisions (like so-called ‘rape grounds’) were not included. It also did not include provisions that are well known to cause restrictions in practice elsewhere, like parental notification clauses, foetal remains disposal clauses, or so-called ‘informed consent’ provisions requiring mandatory ultrasounds and the like.[[20]](#footnote-20) However, even at that early stage, it was quite clear that the Bill posed real diffculties for numerous abortion seekers in Ireland. The mandatory waiting period combined with a very short window for early abortion (12 weeks LMP) was identified early on as source of real concern, especially as it would likely pose significant challenges for people in Northern Ireland, young people, and people in abusive relationships unable sometimes to move freely even to go to the doctor.[[21]](#footnote-21) But there were other concerns too, often discussed by activists on the ground, and in many cases reflecting suspicion borne from experience about the willingness and the ability of the public healthcare system—much of which remains under the patronage of the Roman Catholic Church—to administer the law in good faith and in a way that maximised women’s reproductive autonomy.

At the same time, however, the pro-choice activism of the previous thirty-five years found itself needing to adapt to the demands of the referendum form. The text of the Irish Constitution can only be changed by referendum of the people,[[22]](#footnote-22) and activists had plenty of practice in abortion-related referendums. In 1983 they had resisted the insertion of the 8th Amendment itself, without success. Then in 1992 they had experienced three simultaneous referenda: one to establish a right to information about abortion (subject to legal regulation), one to affirm the right to travel to access abortion care abroad (albeit without state support), and one to reverse a Supreme Court decision—known as the *X Case*[[23]](#footnote-23)*--*finding that a risk of suicide was a sufficient risk to life to allow for termination of a pregnancy under the 8th Amendment. The rights to information and travel were affirmed, and the people rejected the attempt to reverse *X*. Then in 2002 another referendum was proposed, again to reverse *X* and, uniquely in Irish constitutional history, to entrench constitutionally a piece of legislation regulating the availablity of abortion. That was, again, rejected by the People.[[24]](#footnote-24) Apart from these referenda expressly focused on abortion, numerous EU-related referenda had also developed an ‘abortion-slant’, with anti-choice organisers arguing that amendments to the treaties of the European Union—which Ireland can ratify only following constitutional amendment and, thus, a referendum—would expand EU competencies in a way that ‘endangered’ Ireland’s ‘pro life’ constitution. As a result Ireland had, on numerous ocassions, secured protocols from the EU affirming that its abortion law was a domestic matter only. While the abortion question was not, generally, very material in voters’ decision-making in these referenda it had nevertheless, then, been on the agenda. As a result of all of this, as well as many activists’ experience in other social-justice referenda in Ireland (including securing divorce, children’s rights, and marriage equality, and resisting (unsuccessfully) the removal of *jus soli* citizenship), pro choice activists had extensive referendum experience. This included experience of deeply divisive and, in some ways, violent and damaging referendum campaigns.

In spite of some pre-referendum polling from Amnesty International Ireland suggesting majority pro-choice sentiment,[[25]](#footnote-25) pro-repeal activists were nervous. Many, including myself, worried that even people who opposed the 8th would be nervous of the extent of the new proposed law. While we knew that most people were deeply uncomfortable and increasingly intolerant of the damaging impact of the 8th Amendment, some of us were less convinced that they were ready to embrace the proposition that, as much as possible, law should simply leave people to decide for themselves whether to continue with pregnancy. As many of the pro-choice groups organised themsevles into a single, official campaigning organisation—Together for Yes—the tensions between the desired outcome (largely: repeal, followed by decriminalisation and professional regulation only) and the perceived demands of a constitutional referendum (thought, through conventional wisdom, to be: moderation, reassurance, and winning ‘the middle ground’) became clear. Together for Yes was a civil society platform, made up of more than seventy groups and organisations from across civil society. Its three Co-Directors, Gráinne Griffin, Ailbhe Smyth, and Orla O’Connor represented three major organisations: the Abortion Rights Campaign (ARC), the Coalition to Repeal the Eighth, and the National Women’s Council of Ireland (NWCI). While ARC and the Coalition were specifically organised to secure abortion law reform, the NWCI is a much broader organisation which had not always supported comprehensive reproductive rights reform and was, comparatively, a slightly late comer to advocacy for repeal. The Together for Yes executive consisted of the co-directors with experienced reproductive rights and health campaigners: the chief executive and director of advocacy of the Irish Family Planning Association (Niall Behan and Maeve Taylor), experienced activists and abortion-reform scholars with long associations with the Coalition and ARC (Sinéad Kennedy, Sarah Monaghan), and a communications specialist from the NWCI (Silke Paasche). The campaign also had a ‘campaign platform’ with which it engaged as needed, although the Platform did not have decision-making roles; rather strategic decisions seemed to be made primarily by the Executive. The Platform had dozens of member organisations including those formed specifically to campaign for a yes vote, longer-standing advocacy groups, trades unions, and NGOs.[[26]](#footnote-26) The Campaign Platform was the most representative part of the campaign infrastructure, and included groups that advocate for the (general and reproductive) rights of migrant and ethnic minority persons in Ireland (such as MERJ, AkiDwA, National Traveller Women’s Forum, and the Anti-Racism Network), and those that advocate for trans (reproductive and general) rights in Ireland (such as Transgender Equality Network Ireland, NXF National LGBT Federation, and LGBT+ for Choice).

Together for Yes focused, deliberately, on so-called middle ground concerns; cases where women had received diagnoses of fatal foetal anomalies were foregrounded, the harms of a rape ground were advanced as a key argument in favour of a ‘protected period’ of abortion without restriction as to reason, medical professionals were advanced as key promoters of repeal, abortion was presented as a matter primarily of medical care and rarely as a matter of personal choice, the (for many liberatory) practice of Self Managed Abortion was (often implictly) presented as dangerous and risky,[[27]](#footnote-27) and nationalist tropes were subtly engaged with as the reality of abortion travel and reliance on ‘English’ abortion law were presented as state failures.[[28]](#footnote-28) Drawn into engaging with the General Scheme by the ‘no’ campaign’s insistent focus on it, the official Yes campaign found itself endorsing or supporting it, either expressly or by deliberate and choreographed engagements with the Minister for Health who was its primarily proponent. Indeed, Together for Yes released a policy paper in which it concluded that the scheme as proposed constituted “workable and reasonable proposals to allow women and girls to access the abortion services which they need, in a safe and regulated medical environment within the Irish health system”.[[29]](#footnote-29) Nowhere in that policy paper were the shortcomings of the general scheme acknowledged; understandably so, as to do so would have been to present the ‘no’ campaign with ammunition to ground claims detrimental to the ‘yes’ campaign.

While these strategic moves were borne from a desire to win the referendum and a sense, ever present and reinforced by very tight opinion polling, that the referendum was going to be extremely close and might well be our last opportunity for repeal for a decade or more, they reduced the space for nuance and sophistication in the campaign, including for bringing to the fore the inadequacy of the proposed reforms especially seen from marginalised perspectives. They also reduced the space to acknowledge and support people who had ‘everyday’ abortions; who did not fall into the ‘hard cases’ categories but instead were the embodiment of everyday reproductive life. The right to choose was rarely discussed; there seemed to be a reluctance to insist in public discourse on autonomy and choice as fundamental to agentic reproductive life, just as there had been in 1983.[[30]](#footnote-30) There was little talk of ‘trusting women’, but much of trusting women *and their doctors*.[[31]](#footnote-31) Immigrant women, women in direct provision, and trans people became almost invisible in official campaign activities; even when concerns were raised inside the movement about their exclusion the response tended to be that the campaign *of course* cared about them, but had to focus on what voters cared about, and that was Irish women in hard cases. Others involved in the referendum have already written about how the narrowness of the official campaign was circumvented at times: some organisations refused to come on board and instead ran their own campaigns usually insisting on more explicitly pro-choice and feminist talk,[[32]](#footnote-32) and some ‘on the ground’ activists began simply to ignore the messaging from Head Office and did their own thing instead.[[33]](#footnote-33) But there was, of course, discomfort too in the official campaign. Some of the co-directors, like Ailbhe Smyth, were rooted in an explicitly intersectional, all-island, feminist commitment to choice, automomy and abortion without restriction; the Abortion Rights Campaign—one of the three organisations that merged into Together for Yes—was explicity intersectional in its design and commitments.[[34]](#footnote-34) For them, no doubt, the strictures of the official campaign were difficult but necessary; for others, continuing their support for the campaign was difficult, not least because of the feeling that “[i]t would have taken less energy to include migrants in the campaign than it did to actively exclude us and fight with us”.[[35]](#footnote-35) For all of us there was an uncomfortable tension between what we believed in and what we thought we needed to do or say to win the referendum. The apprehension of a loss was weighty and sometimes overbearing; in truth many of us did, wrote and said what we thought would work to secure a 50.1% vote for ‘yes’ on the 25th of May.

In the end, though, the victory was far greater than what almost any of us expected or could have predicted. The exit poll suggested that the pre-referedum polling done by Amnesty International Ireland had been right—the single greatest reason people gave for voting yes was the right to choose.[[36]](#footnote-36) Most people said the referendum campaign had had no impact on their decision.[[37]](#footnote-37) Middle Ireland, it turned out, was pro choice after all, and by a huge majority. It is difficult to know whether those exit polls reflect real sentiment or the reconstructed sentiment of voters on a day when, at least in Dublin where I was, one could feel that the ‘yes’ campaign would be victorious from very early on in the day. But at the very least, the figures give us pause for thought about the compromises that were made in the referendum campaign, compromises that felt to many people and organisations committed to intersectional abortion rights activism like betrayal rather than pragmatism, and like the foundation for the sharpest edges of the legislation that followed repeal.

**The Health (Regulation of Termination of Pregnancy) Act 2018 and Incomplete Reproductive Justice**

The Health (Regulation of Termination of Pregnancy) Act 2018 finally came into operation on 1 January 2019. The Act broadly speaking divides access to abortion into three temporal stages. Up to 12 weeks LMP a woman can access abortion without restriction as to reason provided she undertakes a mandated 3-day wait from the time at which the gestation of the pregnancy is certified by a medical practitioner.[[38]](#footnote-38) In practice, this usually means that women access medication abortion through a GP pratice up to 9 weeks, and then abortion in hospital settings from 9 to 12 weeks LMP.[[39]](#footnote-39) Gestational dating is usually quick and based on a woman’s own reported dates, but if someone is over 9 weeks gestation based on her own dates or there are otherwise reasons for doing so, ultrasound may be used,[[40]](#footnote-40) usually introducing further delays while the scans are scheduled and awaited. There is no facility to waive the waiting period where it would put someone over the 12-week limit, or in other cases such as domestic violence where ability to undertake a second visit might be diminished. At the time of finalising this chapter it is reported that all but two counties have GP practices that have publicly signed up to the provision of abortion care,[[41]](#footnote-41) but in-county travel to access care is often needed. A central, Government-run telephone and online advisory service—My Options—is in operation, and women can ring that service for advice on GPs in their area that provide care. Abortion care is free for Irish residents, and if someone is in possession of a medical card (a card providing free GP care, usually on the basis of income) it is one of the few treatments for which a patient is permitted to attend a doctor other than the doctor with whom the medical card is registered.

After 12 weeks abortion becomes tightly constrained. From 12 weeks to foetal viability it is permitted only where there is a risk to the life of the pregnant person[[42]](#footnote-42) or a risk of serious damage to her health.[[43]](#footnote-43) This risk must be certified by two medical practitioners, one an obstetrician,[[44]](#footnote-44) and where such a risk arises abortion care—if elected for by the pregnant woman—is provided in hospital settings. Viability is determined on a case by case basis, but usually considered to be around 23 weeks; the statute defines it as “the point in a pregnancy at which, in the reasonable opinion of a medical practitioner, the foetus is capable of survival outside the uterus without extraordinary life-sustaining measures”.[[45]](#footnote-45) The only situations in which later abortion is permitted is where there is an emergency,[[46]](#footnote-46) or where the foetus has been diagnosed with a condititon that is likely to result in its death before or within 28 days of birth.[[47]](#footnote-47) This diagnosis must be certified by two medical practitioners, one an obstetrician. Because the foetus never reaches viability—statutorily defined—in these cases, there is no upper limit on when abortion might take place. Again, these later terminations take place in hospital settings. In all cases other than emergencies, medics may refuse to provide abortion on conscience grounds, but in those cases they must refer a woman to a willing provider.[[48]](#footnote-48)

On the face of it, there is much to commend in this law. The provision for abortion without restriction as to reason in the first 12 weeks LMP is considerably more liberal than in many countries—including the UK—and medics’ only role is to certify gestation. The health ground after 12 weeks is uniquely constructed; what matters is that there is a risk of serious harm to heath, not a *serious* risk, and not a risk of permanent or grave injury to health. This wording is of course a double edged sword: it both empowers doctors to assess the nature of the possible injury to health in away that centres the pregnant person’s perspective *and* empowers doctors to install insurmountably high standards for an apprehended injury to health to be considered sufficiently serious. In other words—and in keeping with the tone of the campaign—it very much centres medical professionals as critical decision-makers in the administration of abortion law, creating spaces for caution and conservatism. The fact that medics who provide abortion care outside of the terms of the Act are still committing a serious criminal offence[[49]](#footnote-49) means that the ‘chilling effect’[[50]](#footnote-50) of criminalisation continues to cast a shadow over those medical decision-making processes. That this is so can be acknowledged even while one notes, positively, that the new law does, in fact, make abortion available primarily in local, primary care settings for most people who need it.

What that hides, though, is the ways in which the law continues to deliver incomplete reproductive justice and how that impacts, particularly, on marginalised communities whose reproductive lives were largely ignored in the attempt to bring the electorate ‘on board’ in the referendum campaign. On a systematic level, the law imposes what I call both dignitary and constitutional costs on all those who attempt to avail of it.[[51]](#footnote-51) The dignitary costs comprise mostly the costs imposed by the law on women seekng abortion care—the mandatory waiting period, the multiple certifications and so on. The constitutional costs refer to the fact that the law does not foresee or provide for any remedies in situtions of wrongly denied abortion, for example where a woman presents in the first 12 weeks but is denied—by the running down of the clock through delayed or refused certifications, refusal to refer etc—because the 12-week time limit runs out, and she does not have a health risk associated with pregnancy that suffices to allow for abortion lawfully to be provided after 12 weeks. The implication of this is that the Act reflects a legislative failure to recognise that the general constitutional rights of pregnant women—including rights to privacy, bodily autonomy, and freedom from torture or inhuman and degrading treatment—might *entitle* a woman to access to abortion in at least some circumstances.[[52]](#footnote-52) All abortion seekers, then, suffer at least some harms under the Act. This, of course, is not unique to Ireland, but its ubiquity is not its excuse.

Some pregnant people, though, suffer the sharp edges of the abortion law in exaccerbated and particular ways. Let me illustrate this by two examples: trans and non-binary people who seek abortion care, and migrants to Ireland, including those seeking asylum and who, largely unable to undertake paid work due a very restrictive work permit system for asylum seekers, mostly reside in direct provision accomodation, often for many years.

*Trans and Non Binary Abortion Seekers*

Irish law recognises only two genders: male and female.[[53]](#footnote-53) However, no medical interventions are required for someone to apply for legal recognition of gender; in other words, self-certification is permitted and quite unproblematic.[[54]](#footnote-54) Following a review of the operation of the Gender Recognition Act 2015,[[55]](#footnote-55) there is now a policy commitment to recognise ‘non-binary’ as a gender identity, and for the most part the practice of statutory interpretation ensures that legal gender is not a barrier to equal application of law, with words importing the feminine gender importing the male and vice versa.[[56]](#footnote-56) However, in the Health (Regulation of Termination of Pregnancy) Act 2018 the terms ‘woman’ and ‘pregnant woman’ are used, exclusively, to refer to those persons to whom abortion care may be provided and for whom abortion outside the terms of the law is not a crime. Furthermore, woman is defined as ‘a female person of any age’.[[57]](#footnote-57) From very early on in the legislative process it was clear that members of the Oireachtas were uncomfortable with this, first because of concern that it would legally exclude men or non-binary people in need of abortion care, and second because of concern that even if all people were included in the legal category of ‘woman’ for the purposes of this Act this would result in significant dignitary harm to non-women seeking care. Ruth Coppinger TD addressed this directly at Second Stage, saying “Transgender people genuinely fear they could be refused an abortion under the legal definition provided here, which makes clear the person must be a woman. This could be changed very simply by replacing the word "woman" with either the word "person" or the words "pregnant person" or inserting the words "and pregnant person" in the legislation”.[[58]](#footnote-58) It was absolutely clear that the government’s policy was to ensure the law was inclusive of all people who needed abortion care. The Minister for Health made this clear from the start,[[59]](#footnote-59) and both he and members of Parliament frequently used trans inclusive language, moving easily between woman, girl and pregnant person in debates; referring to our ‘trans siblings’; and speaking directly of the need to ensure that this law serves their needs not least because trans and non-binary people were at the forefront of reproductive rights activism throughout and before the referendum.

In Ireland the pro-choice movement is and long has been trans inclusive. This is neither controversial nor contested within the community; as Louise O’Reilly TD put it at the Second Stage debate on the Bill in the Dáil, “Trans people, particularly trans women, are an inextricable part of the feminist community and it would be remiss of us if the legislation providing for the provision of services was to leave them out”.[[60]](#footnote-60) We all know the weight of law on our bodies and want to lift it from one another, recognising that reproductive freedom for some does not have to come at the cost of sexual, gender and reproductive freedom for others. However, in spite of this the legislative language used in the Health (Regulation of Termination of Pregnancy) Act 2018 is clearly exclusionary in sentiment, even if not in legal application. Although some of us continued to press the Oireachtas to add ‘or pregnant person’ to the term ‘woman’ and ‘pregnant woman’ when it appeared in the Bill,[[61]](#footnote-61) Together for Yes itself appears not to have intervened, even though the proposed fix (to add ‘person’ and keep ‘woman’) seemed to meet the needs both to acknowledge that the 8th Amendment’s weight was primarily borne by women and girls and that trans people already experience exclusion and violence within the health system.[[62]](#footnote-62) In other words, such an approach might have ensured both express trans inclusivity and linguistic acknowledgment that the burdens of the 8th Amendment fell almost entirely on women and girls in Ireland. This failure can be seen as a continuation of the failures of the referendum campaign itself; failures that at least some parts of the trans community insisted on naming and having acknowledged. On 26 May 2018, the day after the referendum, Trans Voices for Repeal released the following statement and demand:

A group of independent trans people have called on Together for Yes to formally apologise to the trans people of Ireland, and to acknowledge the pain caused by the trans exclusionary campaign ran by the group in the referendum to repeal the eighth amendment of the constitution.

“We had been informed that, during the course of the campaign, directors and representatives of Together for Yes stated that their exclusion of trans people from the campaign, and campaign messaging, was done purposely to reach the ‘middle ground’. Not only is the idea that trans people, and their lives, are confusing or repugnant to voters extremely offensive but, judging by the tallies and exit polls being released, it seems that it was entirely unnecessary.”

….

Trans Voices for Repeal would like the national Together for Yes campaign, as well as its individual co-directors, to formally acknowledge the pain their actions have caused trans people in Ireland, the negative effect their campaign has had on the mental health of trans people and the unnecessary nature of this exclusion.[[63]](#footnote-63)

To the best of my knowledge, no apology was forthcoming, even though the campaign platform for Together for Yes included a trans rights group (TENI), and even though it was a queer organisation with strong trans representation—Radical Queers Resist—that put their bodies on the line to protect women accessing reproductive healthcare during the campaign, using oversized ‘wings’ and sheets to cover up giant pictures of dismembered foetuses erected outside of maternity hospitals and on street corners by the Irish Centre for Bioethical Reform during the referendum. We do not yet know how many trans and non-binary people have sought abortion under the Act; because the reporting processes refer to women only we are unlikely ever to know this with certainty. But what we do know is that for many, including those who support trans rights but are themselves cisgendered, this was a significant failure in the visioning and articulation of reproductive justice during and after the campaign.

*Migrants and Asylum Seekers*

It has always been the case that Ireland’s abortion law disproportionately impacted on migrants, especially non-EU migrants and especially those without travel documents.[[64]](#footnote-64) The tolerance of abortion travel provided escape hatches only for those easily able to cross borders; for others, it introduced new traps—the need to seek single-entry visas or special travel documentation especially for asylum seekers, the financial burdens of both visas and travel, the delay this created with attendant consequences of abortion type and complication etc.[[65]](#footnote-65) For undocumented migrants transnational travel is almost entirely excluded, especially as lawful abortion is not (yet) regulated in Northern Ireland (thoiugh it will be from March 2020), and a combination of institutional racism and Brexit preparedness mean that modes of transortation between Ireland and mainland UK—such as ferries—that are usually used without document checks by people perceived to be Irish or British are locations of real border-trouble for people of colour and undocumented migrants.

Although transnational ‘travel’ is no longer the default route for abortion access in Ireland, abortion travel is still prevalent. In some cases, that travel is domestic, with people needing to travel to find a willing provider. In others it continues to be transnational—when someone misses the 12-week window, or if a foetal diagnosis is insufficiently serious to meet the statutory threshold, for example. Given the operation of mandatory waiting periods, people must be able to undertake domestic travel twice to access abortion care in the first 12 weeks: once for the certification of gestation and once to receive the prescribed medications or have the surgical intervention that results in the abortion. If someone is unlucky enough to attempt to access care from a doctor who refuses it on the basis of conscience that often increases to three trips (refusal + new certification + medication/surgery), and more if ultrasound needs to be scheduled for the purposes of certifying gestational age.

It may be true that, in some ways, domestic abortion travel is not the same as transnational abortion travel,[[66]](#footnote-66) but this ought not to be taken to mean that domestic abortion travel is accessible. Asylum seekers in Ireland cannot usually work for a living due to highly-restrictive (and only recently introduced) work permission schemes, largely live in government-funded direct provision centres (many of which are in isolated rural locations), and are provided only a paltry weekly allowance of €38.80 by the state. How, exactly, are they supposed to afford to travel to the doctor even if public transport is available (and it almost always is not in rural Ireland)? For asylum seekers in particular, Ireland’s racialising architecture of confinement intersects with poor public services and the new abortion law to impose and exacerbate a fixity and immobility[[67]](#footnote-67) that easily pushes people out of the 12-week window and into, often, the necessity of transnational travel and all of the complications that come with that. Further service provision failures exacerbate this: the My Options information is available in English and Irish only,[[68]](#footnote-68) and people with limited English language skills who find themselves within hospital settings being assessed for qualification after 12 weeks may especially struggle to be heard and to access or challenge the jargonistic medical assessments that the legislation treats as determinative of access to lawful abortion. This new law may meet the needs of most Irish women, but in many cases its failures and limitations bear most severely on migrants. This, of course, was predictable and predicted, but once more the referendum campaign ignored or minimised these risks, failing to place the needs and realities of migrants to the forefront of arguments for repeal and, post-repeal, for legislative reform. As MERJ write:

We warned about these problems and unfortunately we are seeing them being played out. Let’s not make the same mistakes and continue to ignore migrant women. The specific barriers that borders, racism and financial precariousness impose on those who make up to 20% of the population of Ireland cannot be ignored. We cannot talk about reproductive justice, we cannot talk about intersectional feminism, we cannot talk about free, safe, legal and local until we ensure that the voices of all those affected by lack of abortion access are heard and their needs are met.[[69]](#footnote-69)

More than a year after the referendum, MERJ and others continue to try to “challenge the narrative surrounding Together for Yes as a model of intersectional feminism and to address the continued exclusion of migrants and ethnic minorities from Irish feminist discourse in order to move past the dominance of libeal white feminism and build a more radical and inclusive feminist movement in Ireland”.[[70]](#footnote-70)

**The Referendum Form and Failures of Intersectional Praxis**

Iris Marion Young starts *Inclusion and Democracy*[[71]](#footnote-71) with an anecdote about the passage of a referendum petition to establish a Police Civilian Review Board based largely on the need to address the racially oppressive use of police power against Black Americans in Pittsburgh. There, as in Together for Yes, a wide coalition was built so that in the end the call for change was not only about injustice experienced by African Americans but also about the unjust application of police power to the LGBT community and other non-Black racial groups. Building that coalition required a narrative; a way of telling the story of injustice and change to a broad range of people so that all would connect with it and, ultimately, vote in support. That was, she says, “ordinary democracy in action”. But what I am interested in here is the role of ‘the narrative’ which she shows us matters beyond securing the vote; it matters because it plays a role in how the vision of justice that emerges is shaped, and in the extent to which the change that follows is seen as responding to the injustice that motivated it.

In campaigning for repeal, we also built a narrative during the official referendum campaign in Ireland. In contrast to the commitments and arguments of decades-long, intersectional pro-choice activism in Ireland that saw abortion law reform as part of a broader commitment to sexual emancipation and gender justice, that campaign was narrow, focused, and modest in its claims. For those (including most politicians) whose entry point to abortion law reform in Ireland was the formal institutional setting of repeal—the 2016 election, the Citizens’ Assembly, the Joint Oireachtas Committee, and the campaign itself—these visionary, intersectional, emancipatory and radical underpinnings were easily invisibilised. In the official campaign, repeal was about fourteen year old rape victims, women who received diagnoses of fatal foetal anomalies, teenagers endangering their health taking abortion pills unsupervised, women whose health was seriously compromised in pregnancy, doctors unable to give the medical care they thought appropriate becase of the limitations imposed by the 8th. The woman for whom repeal was needed was, in this narrative, not brown. They were not trans or non-binary. She was not in direct provision. She was decidedly ‘Irish’. She was not, as Tara Flynn so aptly put it, “a filthy slut” who got pregnant after disappointing sex on a bean bag.[[72]](#footnote-72) She was virtuous, sad, torn, and in need of our help and support. She was the person we thought people would vote for. She was the paradigm around which so much of the argumentation we made or supported revolved. I used those same arguments and messages myself in public debates, newspaper columns, on the radio, and knocking on doors. The priority was to win on the 25th of May; nothing else would be possible without that, and in this blunt and one-off mechanism of constitutional change—the referendum—many of us worried that the intersectional realities of reproductive oppression were beyond the concern of too many ‘average voters’ to put them at the centre of our argumentation.

That kind of narrative pragmatism is what a referendum based campaign for change pushes us into, but what did it produce? What did we do when we built that narrative? We set expectations of what would suffice as ‘justice’ once the 8th was gone. We conceded, though we perhaps did not allow ourselves to see it, that the change we so hoped for was one that would contain what Wendy Brown calls “hidden cruelties” behind “its sunny formulations of freedom and equality”.[[73]](#footnote-73) And in those expectations we forgot to make sure that real people with real and often deeply complex experiences of life, but who did not fit the paradigm that we thought the electorate would care enough about to vote for, would also find justice within that frame. Even when we reflected on it, in corners of meetings and over anxious glasses of wine, we—certainly *I*—felt entrapped by the constitutional conditions that shaped our claim for legal emancipation, unable to imagine a way to overcome the limitations of the constitutional form and political imagination. We operated, in short, within Patricia Hill Collins’ ‘matrix of domination’[[74]](#footnote-74) rather than in resistance to it, pushed into that position by the promise but the limited emancipatory capacity of constitutional rights work; by the history of Irish feminism’s “alchemy of rights” [[75]](#footnote-75) as the things that oppress us, when attributed to the foetus, but offer some promise of reproductive emancipation if reascribed to our bodies.

Would a more deliberate and self-aware commitment to the manifested praxis of intersectionality have changed this? In honesty, I am not sure that it would. We would still have had to convince the electorate (to come out and vote, and to vote ‘yes’ to this particular proposition) and, more importantly, we still had to start from scratch in educating and on-boarding the vast majority of politicians to support a ‘yes’ vote. And so how then could we, as human rights lawyers and feminists, build a truly intersectional vision of reproductive justice and maintain our fidelity to it when we must try to advance it through a politics that is so poor at complexity, so short in its attention span, and so lacking in truly visionary leadership? The truth is that I don’t know the answer to this question. Maybe the answer is that we simply were not brave enough to try. But maybe the answer is that we couldn’t; that the mechanism of referendum is radically unsuited to it. Perhaps we must just proceed with the battles we believe we can win, apologise, recognise what is at stake, and recommit ourselves to trying once again to improve the law that we now can, tentatively, say instantiates imperfect reproductive justice for some in Ireland. Maybe that is part of the cost of trying to advance justice through constitutional rights, but if it is we must own that. We must remember “that liberal individualism is a violating enablement”[[76]](#footnote-76) and that constitutional rights as a discourse and a framework of rights protection is founded on liberal individualist grounds. Perhaps too the work of constitutional change was so depleting that our collective resources were diminshed and we were less able to impact decisively on the legislative process, ushered by politicians who in many ways wanted to retreat to the pre-repeal position of dealing with abortion as quickly and as ‘neatly’ as possible[[77]](#footnote-77) and seemed unwilling to continue to engage with the complexity and labour of making a law that maximises reproductive agency for all, focusing instead on ‘delivering on the referendum’ and ‘getting the law done’ on time for a self-imposed 1 January 2019 deadline for service rollout.[[78]](#footnote-78)

It is difficult to name and see what was un-won in the victory of repeal. We do not want to criticise those who worked so hard and gave so much over many years to bring us to 25 May 2018, and ultimately to the initiation of lawful abortion provision on 1 January 2019. We also want to be able to hold on to some of the exhilerated, relieved, astounded and—yes—proud delight that coursed through our bodies and poured its way out onto the streets of our towns and cities, onto Twitter and Facebook, and into the embraces and tears of activists gathered together in silent anxiety when the exit poll results were announced late in the evening of May 25th. But unless we name what was un-won and recommit ourselves to working to improve the law from a base of intersectional understanding of its oppressiveness we will fall into the trap of seeing constitutional change as success; of failing to remember that reproductive justice is a process, not an event. In Ireland that process has only just begun. That will require us to continue the ‘feminist law work’[[79]](#footnote-79) of legal consciousness formation and raising to advance and try to secure traction for interpretations and applications of the law that reflect better an intersectional commitment to and envisioning of reproductive justice, as well as to continue our engagement with the formal processes of law reform itself. Three years after the legislation came into force there will be a statutory review of its operation.[[80]](#footnote-80) That review will be our opportunity to re-centre those most exremely and oppressively marginalised and damaged by that law; the people who continue to rely on abortion travel, generosity, importation of medication, self managed abortion, and feminist activist networks to free themselves, when they can, from pregnancy they feel they cannot proceed with.

Mara Clarke, the CEO of Abortion Support Network which supports women from Ireland, Northern Ireland, Malta and Gibraltar to access abortion care in the UK, recently tweeted “Hey Ireland? Your new abortion law is sometimes a real piece of shit. Signed, @AbortionSupport, the people sick of getting phone calls from the people falling through the cracks”.[[81]](#footnote-81) She is right. It is sometimes a real piece of shit, and that cannot easily be disaggregated from (nor is it primarily attributable to) the failures of intersectional praxis in the referendum campaign. Those failures and their particular implications for marginalised pregnant people subject also to racism, nationalism, misogyny, transphobia, homophobia, unrestrained capitalism, socio-economic inequality, partition and ableism demand our renewed attention if a truly intersectional commitment to reproductive justice is to be realised in Ireland, and if we are to redeem our failures of intersectional praxis during the referendum campaign.

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2. See for example Niamh Nic Ghabhann “City walls, bathroom stalls and tweeting the Taoiseach: the aesthetics of protest and the campaign for abotion rights in the Republic of Ireland” (2018) 32(5) *Continuum: Journal of Media and Cultural Studies* 553; Luke Field, “The abortion referendum of 2018 and a timeline of abortion politics in Ireland to date” (2018) 33(4) *Irish Political Studies* 608; Sydney Calkin, “Healthcare not airfare! Art, abortion and political agency in Ireland” (2019) 26(3) *Gender, Place & Culture* 338; Maeve Taylor, Alison Spillane, Sabaratnam Arulkumaran, “The Irish Journey: Removing the shackles of abortion restrictions in Ireland” (2019) *Best Practice & Research Clinical Obstetrics & Gyneacology* (forthcoming); Ruth Fletcher, “#Repealedthe8th: Translating Travesty, Global Conversation, and the Irish Abortion Referedum” (2018) 26(3) *Feminist Legal Studies* 233; Kath Browne and Sydney Calkin (eds), *After Repeal: Rethinking Abortion Politics* (2019, Zed Books) forthcoming; the themed issue of *Feminist Review* entitled ‘Abortion in Ireland’ forthcoming in 2020 and edited by Sydney Calkin, Fiona de Londras and Gina Heathcote. [↑](#footnote-ref-2)
3. Health (Regulation of Termination of Pregnancy) Act 2018 [↑](#footnote-ref-3)
4. For example Mairead Enright, “‘The Enemy of the Good’: Reflections on Ireland’s New Abortion Legislation” (2018) 8(2) *feminists@law*; Fiona de Londras, “‘A Hope Raised and then Defeated?’ The Continuing Harms of Irish Abortion Law” (2020) *Feminist Review* forthcoming; Katherine Side, “Abortion Im/Mobility: Spatial Consequences in the Republic of Ireland” (2020) *Feminist Review* forthcoming. [↑](#footnote-ref-4)
5. Fiona de Londras and Máiréad Enright, *Repealing the 8th: Reforming Irish Abortion Law* (2018; Policy Press) and [www.aboutthe8th.com](http://www.aboutthe8th.com) [↑](#footnote-ref-5)
6. Máiréad Enright et al., Position Paper on the Updated General Scheme of the Health (Regulation of Termination of Pregnancy) Bill, 2018 <https://lawyers4choice.files.wordpress.com/2018/08/position-paper-1.pdf>; Ruth Fletcher et al., Briefing Paper on the Health (Regulation of Termination of Pregnancy) Bill, 2018: Making the Legislation Work, Delivering on the Referendum<https://lawyers4choice.files.wordpress.com/2018/10/hrtop_briefing_final.pdf>; Fiona de Londras et al., “Amending the Health (Regulation of Termination of Pregnancy) Bill: 5 Priority Issues for the Seanad” <https://lawyers4choice.ie/2018/11/29/amending-the-health-regulation-of-termination-of-pregnancy-act-5-priority-issues-for-the-seanad/> [↑](#footnote-ref-6)
7. For example Fletcher above n. 1, Enright above n. 3, Sandra Duffy, “The Regulation of Termination of Pregnancies Bill - an argument for “pregnant people” wording” available at [https://sandraduffy.wordpress.com/2018/07/18/the-regulation-of-termination-of-pregnancies-bill-2018-an-argument-for-pregnant-people-wording/](https://sandraduffy.wordpress.com/2018/07/18/the-regulation-of-termination-of-pregnancies-bill-2018-an-argument-for-pregnant-people-wording/%22%20%5Ct%20%22_blank); Emma 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/>; Sinead Redmond, “It’s Been Two Months Now” <https://feministire.com/2018/07/27/its-been-two-months-now/>; Helen Stonehouse, “Fuck You Simon Harris” <https://learningtheworld.net/2018/11/29/fuck-you-simon-harris/>; Paula Dennen, “Channeling the Things I Know but Don’t Yet Feel” <http://cornflakegirlsmusings.com/index.php/channelling-the-things-i-know-but-dont-yet-feel/>; Repealist <https://twitter.com/Repealist_/status/1063798443204898816> [↑](#footnote-ref-7)
8. I am conscious, especially, of Patricia Hill Collins’ conviction that Black Feminist Epistemology requires personal accountability and that knowledge does not require us to separate ourselves from the emotion and lived experience of that which we are studying or discussing. Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment,* 2nd Edition (2000; Routledge). The same, I hope, is true of Irish pro-choice feminism. [↑](#footnote-ref-8)
9. Murray’s briefs and other writings on the 14th Amendment to the US Constitution can now be read as clearly intersectional in their tone and structure, and ended up being deeply influential on the advocacy approaches of the NAACP although her contribution is perhaps not as well recognised as it might be, However, Serena Mayeri explored this in depth in *Reasoning from Race: Feminism, Law, and the Civil Rights Revolution* (2014; Harvard University Press). See also Sarah Azaransky, “Jane Crow: Pauli Murray’s Intersections and Antidiscrimination Law” (2013) 29(1) *Journal of Feminist Studies in Religion* 155, and Simon D Elin Fisher, “Pauli Murray’s Peter Panic: Perspectives from the Margins of Gender and Race in Jim Crow America” (2016) 3(1-2) *Transgender Studies Quarterly* 95. For a biographical account see Rosalind Rosenberg, *Jane Crow: The Life of Pauli Murray* (2017; Oxford University Press). [↑](#footnote-ref-9)
10. Citizens’ Assembly, Final Report on the Eighth Amendment of the Constitution (Dublin: Citizens’ Assembly, 2017) <https://www.citizensassembly.ie/en/The-Eighth-Amendment-of-the-Constitution/Final-Report-on-the-Eighth-Amendment-of-the-Constitution/Final-Report-on-the-Eighth-Amendment-of-the-Constitution.html>. [↑](#footnote-ref-10)
11. Lawyers addressed the Assembly on its first (Article 40.3.3 generally), second (Article 40.3.3 and fatal foetal abnormalities, international human rights law and fatal foetal abnormalities, mechanisms of constitutional and legal reform), third (legal considerations in respect of a ‘rape’ ground), fourth (Article 40.3.3 and medical and parental decision making, the protection of foetal rights in and beyond the 8th Amendment, legal consequences of repeal) meetings. In total it had five meetings; the fifth was dedicated to finalising its proposals. [↑](#footnote-ref-11)
12. The Assembly addressed this by recording testimony from people who had and who had not accessed abortion during the time of the 8th Amendment and playing those to the citizen members. This occurred in the third weekend of the Assembly’s deliberations and can be accessed on its website: <https://www.citizensassembly.ie/en/Meetings/Fourth-Meeting-of-the-Citizens-Assembly-on-the-Eighth-Amendment-of-the-Constitution.html>. [↑](#footnote-ref-12)
13. For a critical reflection see Máiréad Enright, “Abortion and the Citizens’ Assembly: Agonist Futures?” IADC Symposium <https://blog-iacl-aidc.org/blog/2018/12/5/abortion-and-the-citizens-assembly-agonist-futures-xb2x6> [↑](#footnote-ref-13)
14. Disclosure: I was invited to, and did, address the Committee in September 2017. [↑](#footnote-ref-14)
15. The full list of witnesses is included as Appendix 2 to the Committee’s Report: Report of the Joint Oireachtas Committee on the Eighth Amendment (Oireachtas, 2018) <https://webarchive.oireachtas.ie/parliament/media/committees/eighthamendmentoftheconstitution/Report-of-the-Joint-Committee-on-the-Eighth-Amendment-web-version.pdf> [↑](#footnote-ref-15)
16. Ibid [↑](#footnote-ref-16)
17. General Scheme of a Bill to Regulate Termination of Pregnancy, 2018 <https://health.gov.ie/wp-content/uploads/2018/03/General-Scheme-for-Publication.pdf> [↑](#footnote-ref-17)
18. For analysis of the No campaign’s engagement in lawfare of this kind see Fiona de Londras and Máiréad Enright, “‘The Only Lawyer on the Panel’: Anti-Choice Lawfare in the Battle for Abortion Law Reform” in Katherine Browne and Sydney Calkin (eds), *Post Repeal: Reflections and Futures*(2019, Zed Books) forthcoming. [↑](#footnote-ref-18)
19. Coveney, Simon (2018), “Here’s how my thinking shifted on the eighth amendment”, *Irish Independent*, 28 March 2018 [↑](#footnote-ref-19)
20. Importantly, after the referendum, anti-choice legislators repeatedly tried—without success—to have such clauses inserted. For an analysis see de Londras and Enright, above n. 17. [↑](#footnote-ref-20)
21. See for example the analysis in Máiréad Enright et al., Position Paper on the Updated General Scheme of the Health (Regulation of Termination of Pregnancy) Bill 2018 <https://lawyers4choice.files.wordpress.com/2018/08/position-paper-1.pdf>. [↑](#footnote-ref-21)
22. Article 46, Constitution of Ireland. [↑](#footnote-ref-22)
23. *Attorney General v X* [1992] 1 IR 1 [↑](#footnote-ref-23)
24. For a comprehensive analysis of these referenda and the shaping and reshaping of abortion law after the 8th Amendment was inserted in 1983 see Fiona de Londras, “Constitutionalizing Fetal Rights: A Salutary Tale from Ireland” (2015) 22(2) Michigan Journal of Gender and the Law 243-289. [↑](#footnote-ref-24)
25. Amnesty International Ireland, “What you need to know about attitudes to abortion in Ireland”, February 2016 available at [https://www.amnesty.ie/poll/#](https://www.amnesty.ie/poll/). Raw polling data is also accessible through links on that webpage. [↑](#footnote-ref-25)
26. The full platform membership is available here <https://www.togetherforyes.ie/about-us/campaign-platform-members/> [↑](#footnote-ref-26)
27. Together for yes, “‘As she was losing consciousness, I couldn’t call a doctor’—Mother of woman who took abortion pills”, 23 May 2018. <https://www.togetherforyes.ie/as-she-was-losing-consciousness-i-couldnt-call-a-doctor-mother-of-woman-who-took-abortion-pills/> although *c.f.* Together for Yes, “Briefing on the proposal to regulate termination of pregnancy in early pregnancy (12 weeks): Medical abortion” stating “While the option of medical abortion is generally safe and effective, it cannot be considered acceptable healthcare as it does not reflect an active preference, but the lack of safe options and alternatives” <https://www.togetherforyes.ie/medical-abortion/>. [↑](#footnote-ref-27)
28. Importantly, as politicians seemed to respond well to the claim that without repeal ‘English abortion law is Irish abortion law’ given dependence on abortion travel to the mainland UK, I too pressed this message in both press briefings and newspaper columns such as Fiona de Londras, “‘Yes’ can end primacy of English law”, *The Times: Ireland Edition*, 4 May 2018. [↑](#footnote-ref-28)
29. Together for Yes, “Position on Bill to Regulate Termination of Pregnancy”, 5 April 2018. Available at <https://www.togetherforyes.ie/12-weeks/> [↑](#footnote-ref-29)
30. See the account of the 193 referendum in Linda Connolly and Tina O’Toole, *Documenting Irish Feminisms: The Second Wave* (2005, Woodfield Press). [↑](#footnote-ref-30)
31. For example, during live TV debates Together for Yes tweeted “We need to trust women and trust doctors to do their jobs”: <https://twitter.com/Together4yes/status/989998165616185344> [↑](#footnote-ref-31)
32. For example Solidarity People before Profit. [↑](#footnote-ref-32)
33. Burns, above n. 6. [↑](#footnote-ref-33)
34. ARC, Values and Inclusivity Statement: “ARC aspires to be inclusive and representative of the varied groups of people affected by Ireland’s restrictive abortion laws. We believe this requires a particular focus on those groups that are disproportionately affected by these laws including women who are marginalised by poverty, racism, immigration status and disability. However we acknowledge the significant structural barriers at a societal and organisational level which prevent marginalised groups participation and involvement in ARC. As a result ARC commits to actively address these barriers so as to support the meaningful involvement of people from all socio economic backgrounds, minority ethnic groups or cultures, including Travellers and Roma, people of colour, the LGBTQI community, sex workers and people with disabilities. ARC aims not only to be inclusive within our organisation but also in how we work with others. We aim to work in solidarity with other groups who are experiencing oppression and develop meaningful partnerships to advance our collective struggles across social justice movements in Ireland and internationally”. <https://www.abortionrightscampaign.ie/2016/11/21/abortion-rights-campaign-values-and-inclusivity-statement/> [↑](#footnote-ref-34)
35. Tweet from Emily Waszak (@waszaaaaak) of MERJ <https://twitter.com/waszaaaaak/status/1180216647468105728> [↑](#footnote-ref-35)
36. RTE & Behaviour and Attitudes, 2018, Exit Poll on the Referendum on the 36th Amendment to the Constitution. [↑](#footnote-ref-36)
37. Ibid. [↑](#footnote-ref-37)
38. s. 12, Health (Regulation of Termination of Pregnancy) Act 2018. [↑](#footnote-ref-38)
39. Institute of Obstetrics and Gynecologists, *Interim Clinical Guidance: Termination of Pregnancy Under 12 Weeks* (December 2018), p. 13. [↑](#footnote-ref-39)
40. Ibid, p.p. 9-10. [↑](#footnote-ref-40)
41. Cormac McQuinn, “Two counties still without any GPs offering abortion as just 13pc sign up to the service”, *Irish Independent*, 10 September 2019. [↑](#footnote-ref-41)
42. s.9, Health (Regulation of Termination of Pregnancy) Act 2018. [↑](#footnote-ref-42)
43. Ibid. [↑](#footnote-ref-43)
44. Ibid. [↑](#footnote-ref-44)
45. s. 8, Health (Regulation of Termination of Pregnancy) Act 2018. [↑](#footnote-ref-45)
46. s. 10, Health (Regulation of Termination of Pregnancy) Act 2018. [↑](#footnote-ref-46)
47. s.11, Health (Regulation of Termination of Pregnancy) Act 2018. [↑](#footnote-ref-47)
48. s. 22, Health (Regulation of Termination of Pregnancy) Act 2018. [↑](#footnote-ref-48)
49. s. 23, Health (Regulation of Termination of Pregnancy) Act 2018. [↑](#footnote-ref-49)
50. *A, B & C v Ireland* [2010] ECHR 2032. [↑](#footnote-ref-50)
51. de Londras, above n. 3. [↑](#footnote-ref-51)
52. de Londras, above n. 3. [↑](#footnote-ref-52)
53. Gender Recognition Act 2015. [↑](#footnote-ref-53)
54. Part II, Gender Recognition Act 2015. [↑](#footnote-ref-54)
55. Review of the Gender Recognition Act 2015: Report to the Minister for Emplyment Affairs and [↑](#footnote-ref-55)
56. s. 18(b)(1), Interpretation Act 2001 [↑](#footnote-ref-56)
57. s. 2, Health (Regulation of Termination of Pregnancy Act) 2018. [↑](#footnote-ref-57)
58. Ruth Coppinger TD, *Dáil Debates*, 4 October 2018 [↑](#footnote-ref-58)
59. See for example Simon Harris TD’s comments at Committee Stage: “I want this legislation to be inclusive. I want it to be trans-inclusive. I want a very clear message to go out from these Houses that this legislation is inclusive of transgender people”. Select Committee on Health, 6 November 2018. [↑](#footnote-ref-59)
60. Louise O’Reilly TD, *Dáil Debates*, 4 October 2018. At second stage on the same day, this point was also made by Brid Smith TD, Clare Daly TD, Joan Collins TD. [↑](#footnote-ref-60)
61. See the sources referred to in n. 5 above. [↑](#footnote-ref-61)
62. TENI, *Speaking from the Margins: Trans Mental Health and Wellbeing in Ireland* (2013; TENI) [↑](#footnote-ref-62)
63. [https://medium.com/@transvoicesforrepeal/trans-voices-for-repeal-call-on-the-together-for-yes-campaign-to-formally-apologise-to-trans-people-84931f0fa85d](https://medium.com/%40transvoicesforrepeal/trans-voices-for-repeal-call-on-the-together-for-yes-campaign-to-formally-apologise-to-trans-people-84931f0fa85d) [↑](#footnote-ref-63)
64. For example Eithne Luibhéid, “sexual regimes and migration controls: reproducing the Irish nation-state in transnational contexts” (2006) 83 *Feminist Review* 60; Carl O’Brien, “Dozens of migrant women unable to travel for abortions” *Irish Times*, 15 December 2014. [↑](#footnote-ref-64)
65. Katherine Side, “A geopolitics of migrant women, mobility and abortion access in the Republic of Ireland” (2016) 23(12) *Gender, Place & Culture* 1788. [↑](#footnote-ref-65)
66. The fact that travel will not generally involve taking an airplane to another jurisdiction has been pressed by a number of commentators to suggest that abortion travel under the new law cannot be compared to abortion travel under the 8th. See for example the comments of Dr Peter Boylan: “There may be some degree of travel, but the important thing is that women won’t be travelling outside the country, using Ryanair and Aer Lingus and all the expense and so on that’s involved with that”. Reported in Elaine Edwards, “Abortion services will be ‘unrecognisable’ in year’s time—Peter Boylan”, *Irish Times*, 16 December 2018. [↑](#footnote-ref-66)
67. Katherine Side, “Abortion Im/Mobility: Spatial Consequences in the Republic of Ireland” (2020) *Feminist Review* forthcoming [↑](#footnote-ref-67)
68. MERJ Ireland, <http://merjireland.org/index.php/2019/09/09/migrants-and-ethnic-minorities-being-left-behind-by-irelands-abortion-legislation/> [↑](#footnote-ref-68)
69. Ibid. [↑](#footnote-ref-69)
70. Event description for MERJ, “Challenging White Feminism: Moving Beyond the Exclusionary Politics of Together for Yes”, Dublin, 13 October 2019. [↑](#footnote-ref-70)
71. Irish Marion Young, *Inclusion and Democracy* (2002, Oxford University Press). [↑](#footnote-ref-71)
72. Taken from Tara Flynn’s monologue in *Not A Funny Word*, a one-woman testimonial play about accessing abortion in the Netherlands. [↑](#footnote-ref-72)
73. Wendy Brown, “Suffering Rights as Paradoxes” (2000) 7(2) *Constellations* 208. [↑](#footnote-ref-73)
74. Patricia Hill Collins, above n 7. [↑](#footnote-ref-74)
75. Here I draw of course on Patricia Williams, “Alchemical Notes: Reconstructing Ideals from Reconstructed Rights” (1987) 22 *Harvard Civil Rights-Civil Liberties Law Review* 401. [↑](#footnote-ref-75)
76. Gayatri Spivak, *Outside in the Teaching Machine* (2008, Routledge). [↑](#footnote-ref-76)
77. Marie Fox and Therése Murphy, “Irish Abortion: Seeking Refuge in a Jurisprudence of Doubt and Delegation” (1992) 19 *Journal of Law and Society* 454. [↑](#footnote-ref-77)
78. This is subject to the recognition that some politicians worked hard to try to improve the draft, but the Minister for Health generally refused to accept any amendments and even where he declared himself in sympathy with the arguments about access, intersectionality and marginalisation claimed either that the General Scheme was to be treated as if binding or that the Attorney General had advised that a desired course of action was not constitutionally permissible or legally wise. For analyses of the legislative process see, for example, de Londras and Enright above n. 17, de Londras above n. 3, Enright above n 3, Fletcher above n 1. [↑](#footnote-ref-78)
79. I take this phrase from ongoing (as yet untitled) work with Máiréad Enright, Kathryn McNeilly and Catherine O’Rourke. [↑](#footnote-ref-79)
80. s. 7, Health (Regulation of Termination of Pregnancy) Act 2018. [↑](#footnote-ref-80)
81. <https://twitter.com/maraclarke/status/1170970154177613824> [↑](#footnote-ref-81)