



35 YEARS OF FIGHTING FOR THE RIGHT OF ABORTION IN IRELAND

THE KEY ROLE OF THE CITIZENS' ASSEMBLY IN THE EMPHATIC DECISION OF THE IRISH
PEOPLE TO REMOVE THE EIGHTH AMENDMENT FROM THE CONSTITUTION

CHRISTOPHE POIRE

CONTEXT

- Creation of the Citizens' Assembly (autumn 2016): chairperson + 99 randomly selected citizens
- First question discussed by the Assembly: the Eighth Amendment
- September 1983 referendum:
“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.”
- 1983-2018: 6 referenda (common practise to change the Constitution)

PROBLEMATIC ISSUES

- Is the assembly an autonomous entity or is it inextricably linked to the political stronghold?
- Is it able to diminish the power of the Church and the State?
- Is it a component of the change in the mentality of the Irish people?
- Is it an exercise in deliberative democracy?

REFERENDA RESULTS

- September 1983: **66.9%** in favour of inserting the 8th Amendment
“a landslide result, even if the turnout of voters was only 54.6%”
(Hug 1994)
- May 2018: **66.4%** in favour of deleting the 8th Amendment
=> 1983 referendum turned on its head

PRO-ABORTION ACTIVISTS (AAC)

Women's Right to Choose Group

- Trailblazers of current forms of mobilisation (horizontality and deliberative democracy)
- A new space for reflection

ANTI-ABORTION ACTIVISTS (PLAC)

- Use of emotional arguments to persuade Irish voters
- A negative vote = an anti-Irish vote

“The influence of the Catholic doctrine on social politics is indisputable and marked by numerous references to religion.” (Nault 2015)

THE 1992 X CASE

- double feeling of guilt for the family: abortion both unlawful and immoral
- High Court order overturned by Supreme Court (4 to 1)
=> abortion legal in cases of real and substantial danger to the mother, but no medical treatment in Ireland

1992 -- THREE REFERENDA: REVISION OF ARTICLE 40.3.3

1. “This subsection shall not limit freedom to travel between the State and another State.” (accepted with 62.3%)
2. “This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state.” (accepted with 59.9%)

1992 -- THREE REFERENDA: REVISION OF ARTICLE 40.3.3

3. “It shall be unlawful to terminate the life of an unborn unless such termination is necessary to save the life, as distinct from the health, of the mother where there is an illness or disorder of the mother giving rise to a real and substantial risk to her life, not being a risk of self-destruction.” (received only 34.6% of Yes)

3rd SUBSECTION

- too ambiguous (rejected by both sides)
- absence of communication and pedagogy:

“A referendum campaign must be didactic.” (Hamon 2012)

MARCH 2002 REFERENDUM

Referendum to toughen the law (rejected by **50.42%**)

“This negative vote was a sign of breaking away from the teachings of the Church and the nationalist and conservative political party in power.” (O’Toole 2002)

2013 – PROTECTION OF LIFE DURING PREGNANCY ACT

- October 2012: Savita Halappanavar's case
- July 2013: *Protection of Life During Pregnancy Act* passed
(127 for, 31 against, 3 abstentions)

Abortion allowed in urgent circumstances for the mother (physical and mental) and treatment available in Ireland

“a watershed moment in Irish history” (Maignant 2014)

THE CONSTITUTIONAL CONVENTION

December 2012: creation of a Constitutional Convention
(chairperson + 33 members chosen among politicians + 66
randomly chosen members from the electorate)

Recommendation of the Convention about gay marriage:
79% in favour (2015 referendum result: **62.1%**)

THE CITIZENS' ASSEMBLY

Autumn 2016: Creation of the Citizens' Assembly => new forms of political discourse within a new geographical, political, cultural and social space

More openness, more horizontality, more direct participation, growing involvement of ordinary people, partnership between the public and their representatives, citizens' voice

POLITICIANS' AND JOURNALISTS' REACTIONS TO THE CITIZENS' ASSEMBLY

(even those in the progressive camp)

- A way of postponing a new referendum on abortion
- A governmental tactic to prepare the referendum campaign
- A way of excluding the Catholic Hierarchy from the discussion

TRANSMEDIA AVAILABLE TO THE GENERAL PUBLIC

- Social media (Twitter, Facebook, Instagram...)
- Website: www.citizensassembly.ie
- 80 hours of public hearings
- Thousands of written contributions to the debate (e-mails, letters...) by individuals and activist groups

“Participation, as well as deliberative democracy, needs scenes of discussions, rules of debate and assessment of impact.” (Gaudin 2007)

THE CITIZENS' ASSEMBLY: BEFORE AND AFTER

BEFORE: debate reserved to lobbies, political parties, Catholic Hierarchy, Protestant Churches, trade unions...

NOW: debate open to all citizens (both C.A. members and the general public)

FIRST 3 VOTES ORGANISED WITHIN THE C.A.

(questions formulated by the members themselves)

- **1st vote:** “Do you think Article 40.3.3 should be retained in full or not retained in full?”

“not retained”: 79/91

- **2nd vote:** “Do you think Article 40.3.3 should be repealed (i.e. deleted and not replaced) [option 1] or replaced or amended [option 2]?”

option 1: 39/91 option 2: 50/91 abstentions: 2

• 3rd vote: “How do you think Article 40.3.3 should be changed?”

Two options:

- Option 1: “Article 40.3.3 should be replaced with a constitutional provision that explicitly authorizes the Oireachtas to legislate to address termination of pregnancy, any rights of the unborn and any rights of the pregnant woman.”
- Option 2: “Article 40.3.3 should be replaced or amended with a constitutional provision that directly addresses termination of pregnancy, any rights of the unborn and any rights of the pregnant woman.”

option 1: **51**

option 2: **38**

prefer not to say: **3**

=> Transfer of responsibilities from constitutional to parliamentary law

VOTES ON ABORTION

64% globally in favour (referendum result: 66.4%)

Distribution of votes among those 64%:

- 48% for the termination of pregnancy up to 12 weeks without restrictions
- 44% up to 22 weeks
- 8% for abortion with no constraints at all (no time limits)

CONCLUSION

- 1st victory: June 2017, with C.A.'s advocacy of abortion up to 12 weeks
- Crucial / decisive role of the Citizens' Assembly in the May 2018 referendum result: legalisation of abortion approved by about 2/3 of the electorate
- 2018 Campaign = The Citizens' Assembly + Together For Yes
- Marches in the streets = small citizens' assemblies in themselves

IN THE FUTURE

- Will the Assembly be able to keep a certain degree of autonomy?
- Will it still be inclined to transparency and openness?
- Will its members keep the same status while mixing with politicians?