

‘Changed Utterly’: The Citizens’ Assembly on the 8th Amendment

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ABSTRACT

The 2018 Citizens’ Assembly on the 8th Amendment of the Constitution instigated an important process for public participation and deliberation about the legal status of abortion in the Republic of Ireland. Examining the processes of the 2018 Citizens’ Assembly, I argue that it was consistent with democratic deliberations as discrete initiatives that function alongside other deliberative processes. I identify and examine some limitations of Citizen Assembly processes, including the tendency to favour monologue over dialogue, the construction of ‘objective’ reason over the possibility of emotion in deliberations, and processes of exclusion that limited understandings and applications of Iris Marion Young’s idea about social justice. Their implications were identified as limitations in public engagement and political decision making in the Republic of Ireland in a 2017 Council of Europe fact-finding report. In future, acknowledging and addressing these limitations could enhance the use of Citizens’ Assemblies and their relationship to other systemic processes to consider constitutional change.

Keywords: abortion, deliberative democracy, Citizens’ Assembly, Republic of Ireland, 8th Amendment

INTRODUCTION

In a referendum on May 25, 2018, a two-thirds majority of Irish citizens voted to repeal and replace Article 40.3.3, known as the 8th Amendment, with legislation and clinical guidance. Inserted in *Bunreacht na hÉireann* (hereafter the Irish Constitution) in 1983, its insertion and judicial interpretation restricted access to legal abortion (Constitution of Ireland, 2018). The outcome of the 2018 public referendum was not a foregone conclusion. It was preceded by sustained periods of activism, including cases lodged at supranational human rights bodies that exposed the cruel effects of Ireland’s chosen position of legal, constitutional, and moral exceptionalism; but it was also proceeded with conservative forces, including political elites who supported its insertion. In an effort to appease public dissatisfaction with restrictions and to address international pressures, Fine Gael *Taoiseach* Enda Kenny established a Citizen’s Assembly to consider the constitutional and legal matters of the 8th Amendment¹.

The Irish state had engaged Citizens’ Assemblies previously. The *Convention on the Constitution* (2014) made recommendations to the (then) government on nine constitutional issues, ranging from marriage equality to legal voting age (de Londras and Markicevic, 2018). At that time, the possibility of deliberations about the 8th Amendment was questioned by some advocacy groups, but Kenny earmarked deliberations for some point in the future (Stauton et al., 2015). In 2016, as ‘an outcome of a commitment in the *Programme for Partnership Government*,’ Kenny convened a Citizen’s Assembly to consider five constitutional issues, including the 8th Amendment (Farrell et al., 2013: 114). Quickly, the 8th Amendment overshadowed the four other constitutional considerations, including pressing issues such as Ireland’s role in climate change².

The Citizen’s Assembly process was intended to reflect public opinion about abortion. The format chosen was an intentional one designed to engage ordinary members of the public and to fit alongside other deliberative

¹ For some, this was a surprising announcement. Griffin, O’Connor and Smyth (2019: 29) suggest ‘Kenny gave all the appearance of someone who would prefer never to have to deal with the issue of abortion.’ De Londras and Markicevic (2018: 89) suggest the Citizens’ Assembly process was viewed as ‘nothing more than a delaying tactic that would put abortion law reform on the long finger of a government that was broadly anticipated would be unstable due to its minority status and unorthodox composition.’

² The five issues were the state’s abortion ban, the challenges and opportunities of an ageing population, fixed-term parliaments, the process for referendum and, climate change.

processes referred to in the scholarly literature as a 'systems approach' (Mansbridge et al., 2012: 1) to democratic deliberation. The Citizens' Assembly was a space to facilitate 'a talk-based approach to political conflict and problem-solving through arguing, demonstrating, expressing, and persuading' (Mansbridge et al., 2012: 4). It was coupled, intentionally, with an institutional design that sat alongside other state-organised processes of deliberation (Hendriks, 2016). These included the Citizens' Assembly, a Joint Committee of the Houses of the Oireachtas on the 8th Amendment of the Constitution comprised of political elites from *Dáil Éireann* and the *Seanad*, a public referendum and its associated campaigning, and consultations for the development of clinical guidance for practice. The Citizens' Assembly on the 8th Amendment was only one part of a multi-level process that involved public participation and, in its various forms reflected 'some levels of planning and control' (Hendriks, 2016: 44). Assessment of the Citizens' Assembly on the 8th Amendment here is based on a qualitative analysis of its recorded and print proceedings, materials and reports, on media reporting, and popular (Boylan, 2019; Griffin et al., 2019) and scholarly analyses (de Londras and Markicevic, 2018; Drażkiewicz-Grodzicka and Ní Mhordha, 2019) of the Citizens' Assembly, including research generated specifically out of members' experiences (Farrell et al., 2020)³. This analysis responds to and engages directly with scholarly discourses around deliberative democracy (Farrell et al., 2020), and some others (Mouffe, 2000; Sanders, 1997; Young, 1999) offer feminist engagement and critiques of deliberative democracy, and the legislative result of the Citizens' Assembly on the 8th Amendment (Enright, 2019).

In this analysis, I recognise and understand the Citizens' Assembly on the 8th Amendment as a constituent part of a larger and more complex system that involves deliberations among ordinary people, advocacy groups and designated experts, and government bodies and their institutions (Mansbridge et al., 2012: 2). It is precisely because of its importance in relation to these component parts, and because 'the deliberative systems approach remains a work in progress,' (Hendriks, 2016: 43) that careful scrutiny of the Citizens' Assembly process is warranted. This analysis demonstrates the connectedness of component parts of deliberative processes and encourages further theorising about deliberative democracy in its various forms (Hendriks, 2016: 57) and about its connectedness. Specifically, it identifies areas for improvement in the Citizens' Assembly process that are intended to strengthen future, connected, systems of public deliberation (Ercan et al., 2016: 204). It is important that the quality of the deliberative system continues to be improved through changes that facilitate enhanced public trust in these processes.

The Citizens' Assembly was an articulation of public opinion about the necessity of substantive reform that was ignored previously by successive Irish governments (Fine-Davis, 2015). However, it was not the first public effort to address Ireland's abortion law⁴. In 2016, the intentional formation of a public body to deliberate about legal access to abortion in Ireland followed on from a 2015 positive referendum outcome on the topic of marriage equality⁵. That referendum outcome resulted in constitutional change and fostered public perceptions that the Roman Catholic Church's hold in Ireland, and the previously tight relationship between the Church and the Irish state had loosened. This assumption, alongside the outcome in the referendum on the 8th Amendment, led to assumptions that Ireland was changed. Following the referendum outcome on the 8th Amendment, (then) Labour Party Senator (now *TD*, *Teachta Dála*), campaigner for abortion reform, Ivana Bacik (2018) referred to the situation as 'changed utterly' (Bacik, 2018). In declaring the 8th Amendment to be 'history,' Bacik drew intentionally upon William Butler Yeats' famous poem, 'Easter, 1916,' which was written to commemorate another revolution that dramatically changed Ireland⁶.

I analyse the work of the Citizens' Assembly, which resulted in new legislation and clinical guidance. I outline how the Citizens' Assembly was constituted and I examine the parameters of its processes as a forum of intentional public deliberation. This analysis bridges bodies of scholarship that examine Citizens' Assemblies as forms of public deliberation (Farrell et al., 2013, 2018) and specific examinations of the Citizens' Assembly on the 8th Amendment in Ireland (de Londras and Markicevic, 2018; Drażkiewicz-Grodzicka and Ní Mhordha, 2019). First, I detail the Citizens' Assembly format and contributions. I demonstrate how the Citizens' Assembly provided a

³ Public submissions to the Citizens' Assembly process are available online and some Citizens' Assembly deliberations were livestreamed on a free commercial server. The organisation, Lawyers for Choice, live tweeted the proceedings on the social media platform, Twitter. There was no public access, except for self-reporting to the entire Assembly, of private table discussions amongst members. Also, there was no access to members' personal, written reflections.

⁴ Previous public referenda related to amendments of the 8th Amendment in *Bunreacht na hÉireann* occurred in 1992. As well, the 8th Amendment of the Constitution was referenced as a negotiated matter in European Union public referenda in Ireland in 1992, 2008 and 2009.

⁵ The marriage equality referendum passed on May 22, 2015, Yes votes 62.07 percent, No votes 37.9 percent and voter turnout 60.52 percent (Government of Ireland, 2018).

⁶ 'Changed utterly' appears at the end of Yeats' first and last stanzas: 'All changed, changed utterly/A terrible beauty is born' and, in the last stanza evokes nationalist images, 'Wherever green is worn/Are changed, changed utterly:/A terrible beauty is born' (Yeats, 1921, 1997).

visible barometer of public opinion about abortion access in Ireland. Through the solicitation of public submissions and guided public discussions, it provided a forum for opinions about abortion, about what were deemed to be related areas (i.e., medicine, medical ethics, law, religion and religious observance) and first-hand experiences of health care in Ireland. From the time of the establishment of the Citizens' Assembly, public opinion was reported regularly in media outlets. In this way, the deliberations of the Citizens' Assembly reached well beyond its relatively small number of appointed members. In addition to those who participated as members in the Citizens' Assembly, over 13,000 public submissions were received and were accessed over 51,000 times on the Citizens' Assembly website⁷. Media outlets in Ireland reported on the Citizens' Assembly proceedings; its establishment and its inaugural meeting were regarded as newsworthy. Those who did not follow the Citizens' Assembly's livestream broadcast or visit its website were still likely to have been exposed to media reports about its deliberations on television, in newspapers, and on social media. In many of these spaces, the Citizens' Assembly was often lauded as a form of democracy in process and its wide reach was regarded as a democratic forum that made room for all opinions about abortion law.

Second, I analyse assertions about the Citizens' Assembly's participatory and democratic nature more closely. I situate this analysis in existing scholarship that examines the systems approach to deliberative democracies. In doing so, I recognise its relationship to other deliberative processes, including the Joint Oireachtas Committee on the 8th Amendment, as well as its relationship to democratic values, specifically inclusion and social justice and in ways that are supportive of a system approach (Mansbridge et al., 2012). Chambers makes an important distinction between 'democratic deliberation' and 'deliberative democracy' (Chambers, 2009: 323). She distinguishes 'discrete deliberative initiatives,' such as the Citizens' Assembly on the 8th Amendment from 'deliberative democracy,' which encompasses more substantive possibilities for change including 'tackl[ing] larger questions of how the public (...) relates to the state' (Chambers, 2009: 323). I argue that the Citizens' Assembly was enacted as a visible and valuable process, but that it did not meet Chambers' conceptualisation of deliberative democracy. Its operation echoed, but did not address or remedy, limitations identified in public-state relations (Council of Europe, 2017). Its rhetoric favoured 'monological rather than dialogical' (Chambers, 2009: 324) forms of communication, particularly in the construction and hierarchical arrangement of expertise. It favoured objective constructions of knowledge defined by reason and objectivity, but these were positioned as antithetical to knowledge defined by reason and inflected with emotion (Chambers, 2012: 324). Medical, legal, and ethical knowledge were more highly valued than knowledge acquired through advocacy and/or personal experience. For instance, it was only on the insistence of Citizens' Assembly members that testimonies from those personally affected by the 8th Amendment were included in proceedings, albeit in ways I show to have been moderated heavily. Subsequent deliberative initiatives also relied heavily on, and in some instances replicated, limited constructions of expertise to draft legislation that framed legal abortion access in Ireland as a medical, physician-controlled prerogative (Boylan, 2019) and situated it, in some circumstances, in criminal law.

The construction and operation of the Citizens' Assembly on the 8th Amendment and its relation to other deliberative processes were also limited in terms of principles of inclusion and social justice (Young, 1999). Iris Marion Young (1999: 291) argues that 'deliberative democracy requires political equality' that cannot be attained in unequal situations. In this instance, the Citizens' Assembly on the 8th Amendment and its subsequent processes excluded entire groups of people including, for example, groups of migrants living in Ireland (Side, 2020). It provided migrant groups living in Ireland with no opportunities for participation or future claims making or accountability (Young, 1999: 295) and their circumstances were excluded from the law. As Young (1999) notes, values of democracy do not necessarily align with principles of social justice. In this instance, the use of a systems approach to abortion reform may be 'democratically legitimate' (Young, 1999: 299), but it resulted in legal outcomes that are unjust and that perpetuate inequalities (de Londras, 2020; Side 2020).

ENGAGING CITIZENS: THE CITIZENS' ASSEMBLY ON THE 8TH AMENDMENT

The 2016 Citizens' Assembly on the 8th Amendment was comprised of ninety-nine randomly selected citizens (Griffin et al., 2019)⁸. Members were chosen by a polling company and selected from among those included on the electoral register. Elected politicians were excluded from participation. While it was the case that politicians were excluded from this particular process, many politicians made their views about abortion known by aligning themselves publicly with campaigns for retain or repeal. Some joined caucuses to indicate their campaign support

⁷ The total number of submissions received was 13,075 and 12,200 appear on the Citizens' Assembly website. Some submissions were removed at the request of their submitters (de Londras and Markicevic, 2018: 91).

⁸ Participation in the Citizens' Assembly was voluntary and without remuneration. There was some membership turn-over and in total, 142 members participated. The initial membership composition, by gender, was 51 women and 48 men (Griffin et al., 2019).

to their constituents and to members of the public. Later, politicians constituted the twenty-two members of the Joint Committee of the Houses of the Oireachtas on the 8th Amendment which received the Citizens' Assembly's recommendations⁹.

Members of the Citizens' Assembly met over five consecutive weekends, spanning a six-month period beginning in October 2016. The government appointed Supreme Court Judge, Ms. Justice Mary Laffoy as Chair of the Citizens' Assembly. In addition to the Chair, administrative scaffolding included: an independent (arms-length from government), six-person Secretariat comprised of civil servants to assist the Chair; a six person (plus the Chair) Steering Group elected from amongst representative members of Citizens' Assembly, and a six-person Expert Advisory Group comprised of academics and practitioners (two women and four men) with expertise in medicine, constitutional law, and medical ethics, but none with specific expertise in abortion access. Representatives from designated groups, including advocacy groups, political parties, embassies, religious groups, academics, and social partners were permitted to attend public Citizens' Assembly proceedings, but were prohibited from communicating with Citizen Assembly members (Griffin et al., 2019: 61).

Luke Field characterises the Citizens' Assembly's proceedings as a 'learn-hear-deliberate' format (Field, 2018: 614). A considerable amount of members' time was spent listening to presentations made by twenty-five selected experts in the areas of medicine, law and ethics and to seventeen selected representatives from organisations and advocacy groups that supported or opposed abortion reform in Ireland (Field, 2018: 614). Invited experts addressed that

legal regulations about abortion in Ireland and abroad, the intricacies of constitutional law, the relationship between domestic law and international human rights, [and] the experiences of medical practitioners (de Londras and Markicevic, 2018: 90).

There was a concerted effort to balance advocacy group perspectives. For example, a presentation by experts from Doctors for Life Ireland was followed immediately by a presentation by experts from Doctors for Choice, and a presentation by representatives of the Irish Catholic Bishops Conference was followed immediately by a presentation from representatives of Atheist Ireland. Those connected with organisations and advocacy groups included physicians, students and youth, parents' groups, women's organisations, front-line service organisations, religious organisations, and clergy, and those whose advocacy efforts were focused specifically on abortion. Presentations were followed by question-and-answer sessions and guided and facilitated small group discussions with a reporting back format to the Assembly, and in some instances, with time for members' personal, written reflections. Only a small number of public submissions received were shared with members in their meeting materials, although all submissions were accessible. At the conclusion of their deliberations, Citizen Assembly members voted by majority and in 'sequential ballot-voting' on thirteen recommendations and on a set of ancillary recommendations (Citizens' Assembly on the 8th Amendment of the Constitution, 2017). A majority of members (eighty-seven percent) recommended that the Eighth Amendment not be retained in full (Citizens' Assembly on the 8th Amendment of the Constitution, 2017: 16). A majority of members (fifty-six percent) voted that the 8th Amendment should be replaced or amended by a constitutional provision that explicitly authorised the Oireachtas to legislate to address 'termination of pregnancy, any rights of the unborn, and any rights of the pregnant woman' (Citizens' Assembly on the 8th Amendment of the Constitution, 2017: 16, 19).

The Joint Committee of the Houses of the Oireachtas on the 8th Amendment 'scrutinised' the Citizens' Assembly recommendations (Enright, 2019: 64). The Joint Committee also had the ability to invite expert testimony and it did so. Peter Boylan (2019: 185) identifies the Joint Committee of the Houses of the Oireachtas' purpose as hearing 'factual evidence' from thirty-four expert witnesses. Representatives from a single advocacy group, Termination for Medical Reasons Ireland, were invited to address the Joint Committee of the Houses of the Oireachtas in their deliberations. Chaired by Senator Catherine Noone (Fine Gael), the Joint Committee of the Houses of the Oireachtas on the 8th Amendment issued its final report and a dissenting report and on the basis of these two reports, the Fine Gael government announced a public referendum on the issue of the 8th Amendment, held on May 25, 2018. Proceedings of the Citizens' Assembly could be contained through its administrative processes, but the heavily contested political context in which their deliberations were reported in relation to the referendum proved far more difficult to contain. Both sides of the referendum campaigned vocally. The referendum passed by a majority (66.40 percent) of citizens who voted to authorise the Oireachtas to legislate on the issue of legal abortion access in Ireland¹⁰.

⁹ One political party, Solidarity-People Before Profits, split their representative committee seat on the Joint Committee of the Houses of the Oireachtas on the 8th Amendment between two TDs.

¹⁰ The referendum passed by a majority vote—Yes votes 66.40 percent, No votes 33.60 percent and voter turn-out 64.13 percent. The constitution was amended by the *36th Amendment of the Constitution Act* (2018).

While some politicians were critical of the Citizens' Assembly process. At its onset, Senator Rónán Mullen (Independent) criticised the cost of the Assembly proceedings (Power, 2016). TD Ruth Coppinger (Solidarity-People Before Profits) and Senator Lynne Ruane (Independent) criticised the Citizens' Assembly as part of an unnecessarily lengthy, pre-referendum process of needed reform (Drażkiewicz-Grodzicka and Ní Mhordha, 2019: 98). Representing a group that advocated retaining the 8th Amendment, Love Both campaign spokesperson, Sinead Slatterly criticised the Assembly's format, suggesting its members had insufficient time for deliberation and alleging that its recommendations for reform were pre-determined (Slatterly, 2017). It was more often the case that the format of the Citizens' Assembly was praised. Contrary to Slatterly's (2017) assertions, a fact-finding committee for the Council of Europe characterised the Citizens' Assembly on the 8th Amendment as an exemplary model of civil society participation and 'a model for Europe' and praised the initiative for its transparency and for 'the quality of its process' (Council of Europe, 2017: 16).

Previously, public considerations about abortion, whether through referenda, legal and public responses to particular cases, government discussion documents (Government of Ireland, 1999), or media reporting, cast a long shadow of a politics of shame over abortion in Ireland (Fischer, 2016)¹¹. Clara Fischer argues this shame is rooted in perceived links between female sexual transgression and nation and 'national identity formation' (Fischer, 2016: 822). Prior to the 2016 Citizen's Assembly, public stories about abortion tended to emphasise and portray tragic circumstances, including rape, risk of suicide and death as exceptional circumstances (McConnell and Loughlin, 2018). Previously, Irish governments had generally overlooked public views, including opinion poll data when embarking on abortion reform (Reidy, 2019). The Citizens' Assembly process was significant for its willingness to prioritise public opinion about abortion in ways that did not concentrate on exceptionality and that considered the widespread effects of legal restrictions (Reidy, 2019). In the Citizens' Assembly process, public views took centre stage. David Farrell, Eoin O'Malley and Jane Suiter (2013: 102) argue that the Citizens' Assembly was a test of government's behaviour in response to citizens' requests. Similarly, Elżbieta Drażkiewicz-Grodzicka and Máire Ní Mhordha (2019: 96) argue that 'peoples' [Irish citizens'] trust in state institutions' was not at stake; instead, 'politicians' trust in citizens' was at stake. The Citizens' Assembly tested the government's willingness to act on abortion reform. It provided a visible barometer of public opinion about abortion access and temporarily removed the issue from political parties and their agendas (Caldwell, 2019). The process solicited public views to directly inform the political process and a significant difference between this deliberative initiative and previous reform efforts was that the government was compelled to listen to opinions that emerged from the process that it established (Levine et al., 2005).

FALLING SHORT OF DELIBERATIVE DEMOCRACY, INCLUSION AND SOCIAL JUSTICE

The deliberative process offered a novel route to Irish abortion reform; and, at the same time, it was laid out by the state and was confined by its forms and norms (Mansbridge et al., 2012: 2). Its legislation was laid out along an already present 'conservative approach to constitutional possibilities' (Enright, 2019: 65). While the Citizens' Assembly Chair acted fairly and responsively to members' concerns, the issue of abortion was constructed discursively as a controversial and contested issue that deviated from the scope of healthcare provision in Ireland. Three specific limitations affected how deliberations proceeded, including: the construction of discussion about abortion as a controversial issue; a problematic for-or-against frame that was constructed as balance; and the limited ways in which personal narratives were included. These decisions shaped considerations in ways that were limited with implications for deliberative inclusion and social justice.

Specific decisions in the Citizens' Assembly processes reinforced assumptions about an allegedly controversial status for abortion. Throughout the Citizens' Assembly meeting schedule, anti-abortion protesters were permitted to gather outside the entrance of the hotel where members met. Although protest can act as a form of social cohesion (Mansbridge et al., 2012: 18), its purpose in this instance was to intimidate Citizens' Assembly members from engaging in public discussions that threatened the legal status quo. Decisions taken inside the venue also reinforced abortion as controversial. Psychologists were hired as part of the Citizens' Assembly to counsel those members who experienced its proceedings as troubling (Griffin, O'Connor and Smyth, 2019: 67). Additional counselling was also available for those who shared their personal testimony with the Assembly. In these instances, discussing abortion in public was regarded as a potentially damaging activity for individuals, but little regard was given to the effects of legal and medical restrictions on individuals.

The Assembly's principle about a balance of viewpoints framed abortion as simplistic. It presented viewpoints as either for or against abortion and without regard for its complexities. This binary disassociated deliberation from

¹¹ *A Green Paper on Abortion* (Government of Ireland, 1999) was published by an interdepartmental working group in 1999. It set out the circumstances around abortion in a discussion paper format (Quilty et al., 2015).

its complicated context. A frame of divisiveness and the presence of psychologists licensed some representatives from advocacy groups to employ graphic language as a means to persuade members, in this case to maintain the legal *status quo*¹². Some presenters were permitted to convey factually inaccurate information about abortion to Citizen Assembly members, including claims that pregnant people's decision-making is affected detrimentally by hormones that make them incapable of rationality and that British laws do not protect babies' lives¹³.

A small number of decision makers determined how information was conveyed to Citizens' Assembly members. Based on their analysis of over 1,000 public submissions to the Citizens' Assembly, Fiona de Londras and Mima Markicevic argue that submissions had 'remarkably little impact on the Assembly (...) proceedings' (de Londras and Markicevic, 2018: 90). However, additional efforts were made to share public submissions that included personal narratives in order 'to shine a light on them' (Citizens' Assembly, 2017)¹⁴.

Personal narratives about abortion in public submissions were highlighted in three ways: a randomly selected sample from all of the submissions received were included in members' monthly meeting packages; the Citizens' Assembly Secretariat collated personal stories separately; and six personal narratives were collected, pre-recorded and broadcast for all members as a part of the all-Assembly proceedings¹⁵.

Beyond the Citizens' Assembly, personal narratives were also used widely in campaigning by those opposed to reform (Side, 2021) and those who advocated for reform (Griffin et al., 2019: 170). Personal narratives put pregnant decision-makers at the centre of narratives about abortion and, when recounted by members of Termination for Medical Reasons Ireland, they countered assumptions about abortion as a rejection of motherhood (Reidy, 2019; Enright, 2019). Recounting personal experiences allowed some pregnant people to claim agency, to understand and make sense of their own experiences, and to utilise their experiences as a strategic mode for change at temporally significant moments (Boland, 2014). For instance, narratives told by members of Terminations for Medical Reasons Ireland highlighted significant gaps in prenatal testing protocols and addressed the necessity of change. Within the context of the Citizens' Assembly, some personal narratives were strategically managed in ways that may have risked being 'assimilated to national norms' (Enright, 2019: 65). Personal narratives also risked being reshaped into evidence that was irrespective of their highly personalised, intimate nature. Managed too concertedly, their inclusion could fit Chamber's conceptualisation of 'plebiscitary rhetoric,' that which is used to describe speech 'concerned first and foremost with gaining support for a proposition,' in this instance inclusion, to the detriment of the 'merits of the argument' presented (Chambers, 2009: 337).

In any case, the inclusion of personal narratives in the Citizens' Assembly proceedings was merely perfunctory because by 2017 personal narratives about abortion already circulated widely. Personal narratives were already well ensconced in the public vernacular and were likely to have been familiar to Citizens' Assembly members. Public disclosure about previously clandestine abortions began sometime around 2012 when members of the organisation, Termination for Medical Reasons Ireland began to recount their ordeals publicly. Related to circumstances of fatal foetal anomalies, the organisation's members recounted first-hand narratives of travel, incomplete and obstructed information and resources in Ireland, overseas obstetric care, isolation, and associated traumas. In April 2012, members of Termination for Medical Reasons Ireland spoke about their personal experiences to the *Irish Times*; they spoke on RTÉ (the national broadcaster) and met with TDs in Dáil Éireann and the Seanad (Sheridan, 2012). In early November 2012, Savita Halappanavar's tragic circumstances and death surfaced publicly and attracted international attention (Holland, 2013). Public discussion about abortion also ensued in relation to individual cases launched against the Republic of Ireland and adjudicated by international bodies, including at the European Court of Human Rights (Side, 2011) and the United Nations Human Rights Committee (de Londras, 2016).

The Citizens' Assembly proceedings bounded personal narratives within a tightly constrained format. Assembly members' request for the inclusion of personal stories may have been a rejection of the Assembly's decision-making bodies' constructions of expertise, a questioning of the appropriateness of relegating members to the Assembly's on-call psychological counselling, and/or a rejection of the ways that pregnant peoples' experiences were disembodied in the Citizens' Assembly's deliberations. Contributors of personal narratives were identified by advocacy groups and their narratives collected and assembled by the Assembly's Secretariat and staff into a coherent package of evidence. The Citizens' Assembly provided a space where personal accounts were heard, and it assured their longevity through documentation and archiving. However, their inclusion was problematic. These highly personalised, emotional, and traumatic accounts were contrasted with expert testimony. Personal narratives were fitted into the for/against binary solidified by the Assembly's proceedings of the six personal narratives included, only half of them were told by people who had abortions. The decision to include narratives from those

¹² Two speakers, Rebecca Keissling who spoke for Youth Defence and Anthony Levatino who represented the anti-repeal/pro-retain organisation, Women Hurt, spoke graphically about harm from abortions at the Citizens' Assembly.

¹³ See Citizens' Assembly broadcast proceeding (<https://www.youtube.com/watch?v=N54r5YAOR-M>), March 4, 2017.

¹⁴ See Citizens' Assembly broadcast proceeding (<https://www.youtube.com/watch?v=N54r5YAOR-M>), March 4, 2017.

¹⁵ Approximately additional 240 personal narratives were identified from public submissions and were circulated among Citizens' Assembly members for their further consideration.

who did not have abortions for the sake of balance was a missed opportunity to portray a wider range of experiences of abortion-related travel and restricted care. The decision to limit proceedings to include six narratives was likely guided by meeting time limits, but no clear rationale was communicated for this decision and when compared with the number and time given to experts, issues of under representation were evident.

All the narratives collected were anonymised, edited (and shared in advance with their tellers), and were pre-recorded, and broadcast for Citizens' Assembly members. Brevity was a common attribute. Narratives averaged eight and a half minutes each and were broadcast successively (McGreevy, 2017). Their successive broadcast made it difficult for tellers to convey complexities, develop backstories and emit emotive responses. Their brevity made it difficult for listeners to comprehend the range and significance of experiences. Although efforts were made to maintain consistency among the presentations, the experiences themselves spanned significant time periods and were diverse and complicated situations; the sought-after consistency among experiences was an unachievable goal. Narratives which emphasised experiences that happened outside of Ireland were difficult to situate in the context of Irish law. For example, when introduced by the non-specific phrase 'this happened a long time ago,' it was impossible for listeners to be able to discern whether the circumstances described occurred before the insertion of the Fourteenth Amendment, which limited state injunctions imposed against travel, or after its insertion. Without knowing this information, the incurred risks of abortion-related travel and care could not be assessed accurately.

Personal narratives shared with Citizens' Assembly members were 'rehabilitated' as Chambers suggests is possible in her examination of deliberative rhetoric (Chambers, 2009: 331). Personal narratives were translated into preferred forms. Little attention was paid to issues of representation and the lack of attention to representation had direct implications for abortion law. There were no narratives from those who experienced state-imposed travel restrictions, including asylum seekers, refugees, undocumented workers, and international students living in Ireland, and all of whom require ministerial permission to leave and return¹⁶. There was no recognition of systemic disadvantage in assessing reproductive care, including among Travellers and trans communities. These exclusions also persisted beyond the Citizens' Assembly and were reflected in legislation. The Citizens' Assembly on the 8th Amendment contributed towards a process of public deliberation, but the end result of that process did not encompass principles of inclusion and social justice in outcomes. Systemically disadvantaged groups whose voices were marginalised in the Citizens' Assembly process and in campaigning (de Londras, 2021) remained unaccounted for in law (Enright, 2019).

In her analysis of inclusion in democratic processes, Iris Marion Young reminds us that 'a policy can be democratically legitimate...even if it is unjust' (Young, 1999: 297). In the case of Irish abortion reform, limitations in law have profound effects on those who are systemically disadvantaged. For example, non-citizens and trans bodies are excluded entirely from legislation and are disempowered in a legislative relationship that Enright characterises as 'limited benevolent protection' (Enright, 2019: 70). Systemically disadvantaged groups and individuals face a greater likelihood of discrimination in a system that limits access through medical gatekeeping and provides no guarantees of travel for the purpose of care (Enright, 2019: 67; Side, 2020), does not acknowledge a right of personal decision-making, and defines some abortion-related circumstances (including support) as criminal (Enright, 2019).

'CHANGED UTTERLY?'

A discrete, small-scale initiative, the Citizens' Assembly challenged the state's long-standing reluctance to reform abortion legislation. A relatively new institution for Ireland, the Citizens' Assembly offered opportunities for public involvement and provided opportunities to 'undermine populist rhetoric [about abortion], increase knowledge levels,' and to strike 'a closer match between values and voter choices' (Suiter, 2018). However, the Citizens' Assembly, as one part of a systems approach to public deliberation, fell short in some significant ways. The Citizens' Assembly on the 8th Amendment did not significantly alter the state's overreaching powers to continue to shape abortion as a moral issue and one requiring medical intervention (Enright, 2019). Although citizens' deliberations were an intentional part of the process of reform, they occurred in an atmosphere that Carolan describes as 'elite-framed, institutionally bound, and conspicuously legalistic in character' (Carolan, 2020: 503).

State authorities selected and employed the public relations firm that chose its members, devised and staffed the Citizens' Assembly's hierarchical administration, appointed its Chair from amongst the state's judiciary, framed its deliberations, and through the Chair, received its recommendations. Embedded in a systems approach, subsequent state bodies had the ability to accept or to reject the Citizens' Assembly's recommendations, modify

¹⁶ Personal narratives about abortion access were welcomed in unconventional formats, including through artistic and creative artwork and images. However, none of these were shared with Citizens' Assembly members and they remained buried in the Citizens' Assembly's database of submissions.

them, and shape them into legislation. The impetus for their action was likely to have been motivated by both citizens' expectations and by the government's aspirations for re-election. The Citizens' Assembly defined abortion as a controversial topic and favoured claims about balance in ways that minimised complexities. Acknowledging expertise as a 'crucial' component of political systems (Moore, 2020), the Citizens' Assembly adopted a limited conceptualisation of expertise. This power, relative to citizens' deliberations, was replicated at subsequent levels in a systems approach and was reinforced. In other words, some of the limitations of the format of the Citizens' Assembly filtered up and were replicated at the level of deliberations by the Joint Houses of the Oireachtas Committee of the 8th Amendment of the Constitution.

Legislative change was shaped heavily by experts within the confines of their own professional interests and in this way, there were few changes made to the relationship between citizens and the state, which was recognised by a Council of Europe fact finding report as problematic (Council of Europe, 2017). In Citizens' Assembly on the 8th Amendment proceedings, a considerable amount of members' time was spent listening to expert monologues. Conceptualisations of expertise were not questioned in expert testimony or in the context of the appointment of the Expert Advisory Group. There was little recognition of the possibility of 'divided loyalties' amongst experts (Moore, 2020: 554), including loyalties to professional interests and bodies¹⁷. There was little space for Citizen Assembly members to question some of the political assumptions on which invitations to expert testimony rested (Moore, 2020: 554). For example, there was little room to question or interrogate the prevailing assumptions that expertise and advocacy were incompatible. The invitation to testify about constitutional law excluded those whose expertise in constitutional law was combined with advocacy in reproductive justice, including abortion. It was falsely presumed that a lack of advocacy was equivalent to impartiality and that impartiality was a necessary prerequisite for possessing expertise. Alfred Moore argues instead that

expertise in the context of ill-structured problems is not a finished product; rather it is conditioned by the institutional context in which it is brought to bear on practical problems (Moore, 2020: 556).

Assumptions about the importance of objectivity re-made Citizens' Assembly members into passive listeners (McGreevy, 2018). Different values were assigned to different types of testimony within the proceedings and limited citizen dialogue. Those with professional status were cast as objective experts and advocates were referred to as representatives; those who offered first-hand knowledge and experiences had their knowledge restricted to those subjective experiences. Experts were allocated the most time in the proceedings, representatives were allocated less time, and those who offered first-hand testimony were allocated even less time; time for members' discussions declined with their perceived value.

Rather than being corrected at, or contradicted by subsequent processual levels, these shortcomings were replicated at the level of the Joint Committee of the Houses of the Oireachtas on the 8th Amendment (*Report of the Joint Committee on the Eighth Amendment of the Constitution*, 2017: 18). The Joint Committee of the Houses of the Oireachtas on the 8th Amendment relied almost exclusively on expert testimony. The only advocacy organisation invited to testify before the cross-government committee was Terminations for Medical Reasons Ireland. This selection had the unfortunate consequence of framing some reasons for abortion as more legitimate than others (Walsh, 2021). Fiona de Londras and Máiréad Enright suggest that legal and medical expertise provided socially acceptable avenues for the construction of secularised arguments that were distinct from religious ethos (de Londras and Enright, 2019). The cumulative effect of expertise and their assigned value proceduralised deliberations (Carolan, 2020). This was despite the fact that Irish-based expertise in constitutional issues, law, and medicine has derived from decades of careful scrutiny of the effects of the constitutionally embedded 8th Amendment and its far-reaching implications in contexts shaped by illegality, social stigma, and shame (de Londras and Enright, 2019: 59). Eoin Carolan also argues that the deliberative process further minimised understandings of constitutional change as 'complex' and 'context-sensitive,' grossly underestimated instigators of reform, including advocacy, and 'disciplined future constitutional impulses towards reform' (Carolan, 2020: 510).

A 2017 fact-finding mission by the Council of Europe praised Ireland's use of the Citizens' Assembly model; however, it also noted that the 'high degree of motivation' evident among civil society organisations, including advocacy organisations in Ireland, stemmed from a consistent lack of state support (Council of Europe, 2017: 6). The Council of Europe's fact-finding mission noted that civil society organisations often formed in Ireland in response to patterns of governmental level decisions that were based on clientelism and 'nod and wink

¹⁷ The question of divided loyalties arose in relation to two expert invitations extended (both to women) to the Guttmacher Institute and the British Pregnancy Advisory Association. The Chair clarified that representatives were invited in their 'professional capacity as experts' to provide 'impartial information' (Citizens' Assembly on the 8th Amendment of the Constitution, 2017: 59, 60). All except two of twenty-five expert witnesses were doctors, lawyers, physicians, or professors, with a number of experts holding professional status in more than one of these occupations; the possibility of their divided (professional) loyalties did not arise.

behaviour(s)' that undermined cooperation (Council of Europe, 2017: 18). An atmosphere of 'suspicion and mistrust' between civil society organisations and governments prevailed (Council of Europe, 2017: 12). In making future legislative change, the Council of Europe report advised that 'pre-legislative scrutiny of laws' would be in the state's future best interests (Council of Europe, 2017: 17)¹⁸. The Irish state was also criticised by the Council of Europe for its lack of transparency and for 'hiding behind decisions made by civil servants, including the Attorney General, in the process of law-making,' a pattern that was also evident in legislative decision making about legal abortion reform (Council of Europe, 2017: 11)¹⁹. The Council of Europe report was particularly critical about the exclusion of migrant voices, including asylum seekers and refugees, and as a result, their lack of 'adequate access to justice' (Council of Europe, 2017: 10).

The Joint Committee of the Houses of the Oireachtas on the 8th Amendment used law making to quiet Citizens' Assembly voices and recommendations through processes of subsequent revision²⁰. Joint Committee members narrowed legal access to abortion (Joint Committee on the Houses of the Oireachtas on the 8th Amendment, 2017). Contrary to recommendations made by a majority of Citizens' Assembly members through the deliberative process, Joint Committee members limited grounds for access to abortion and restricted time frames²¹.

Joint Committee members also went beyond the recommendations made and introduced a non-medically necessary wait period to access legal abortion (Boylan, 2019: 29, 193). All of these changes limited abortion access further and limited it disproportionately for those who experienced systemic disadvantage and whose voices were already absent from the deliberative citizens-only process (Side, 2020; de Londras, 2020)²².

CONCLUSION

The Citizens' Assembly on the 8th Amendment, although embedded in a system that was connected to other deliberative processes, did not have 'the capacity to meaningfully challenge the existing power structure of Ireland's political landscape' (Dražkiewicz-Grodzicka and Ní Mhordha, 2019: 96, 97), including the ability to substantially alter the relationship between Irish publics and the state's legislative decision-makers.

The introduction of abortion reform in the Republic of Ireland was a lengthy and complicated process that was shaped by advocacy organisations, the media, the judiciary domestically and internationally, and by the Irish state and governments in power. Although the Citizens' Assembly played a key part in processes of reform, its instigators established agendas long before the Citizens' Assembly materialised. State involvement, however, in processes of citizens' deliberations, was not to be underestimated (Reidy, 2019: 27). Governments leaned heavily on existing state bodies and powers and on the medical profession, to whom it looked to convince the public about the need for incremental reforms and legislated medical supervision of abortion. This cautious and incremental approach to reform deviated from citizens' recommendations and the difference between these approaches, and their outcomes demonstrated a persistent gap between the ideals of the Citizens' Assembly, as a form of deliberative democracy and its enactment into law by the Irish state (Reidy, 2019 27).

In this specific instance, the approach that was employed included creating and favouring bodies of knowledge based on expert opinion that, paradoxically, excluded those with first-hand experiences of travel and abortion and whose relationship to abortion was constructed as subjectively and problematically inflected with emotion. In the Citizens' Assembly process, some recommendations were rejected as antithetical to objectivity. This is despite some politicians reporting having been moved emotionally by the personal stories they heard about abortion restrictions and their consequences (Leahy and O'Halloran, 2018). As well, some politicians on both sides of the referendum campaign used their political platforms to appeal to the emotions and decision-making of others.

Based on this analysis of the Citizens' Assembly, there are some important lessons for its future uses in deliberative processes and for its embeddedness in a systems approach to legislative and constitutional change.

¹⁸ No such scrutiny was proposed or occurred in relation to laws and clinical guidance governing abortion reform.

¹⁹ The Attorney General's position on the legal exclusiveness of the term women in the law was not open to public scrutiny, despite opposition from trans groups and their allies.

²⁰ The majority of these amendments were introduced by Senator Rónán Mullen (Independent) and TDs Mattie McGrath (Independent) and Peter Fitzpatrick (Independent) and were introduced with the intention of restricting legal abortion access in Ireland.

²¹ Citizens' Assembly members voted on twelve circumstances to access legal abortion; there was a majority vote to access abortion in all circumstances, including with no restrictions as to reason (64 percent) (Citizens' Assembly on the 8th Amendment of the Constitution, 2017: 36). The Joint Committee of the Houses of the Oireachtas narrowed accessed further. Abortion is available legally without cause to reason and after twelve weeks in circumstances where there is a risk to life, serious risk to health, and fatal foetal anomaly (Enright, 2019: 55).

²² Only five of fifteen advocacy organisations that addressed the Citizens' Assembly noted the obstacles to access encountered by migrant populations (Side, 2020: 23).

Constructions of expertise and their use, in the context of desired deliberations, deserve closer scrutiny. It is important to recognise how expertise is conceptualised, the value assigned to it, and the role it plays in facilitating and limiting deliberations. The ability of experts to enhance discussions may also be limited by their ability to also stultify them. The value of objectivity and well-intended efforts to strike a balance also deserve closer scrutiny, as its unlikely that topics of discussion amongst citizens, including abortion, gender equality and climate change (both of which have also been discussed by Citizens' Assemblies), will and should remain without emotion. Instead, fruitful citizen engagement and reform could well depend on the emotions of those who are fully engaged with these issues. The inclusion of personal narratives in the Citizens' Assembly on the 8th Amendment is clear evidence of just how difficult it is to try to manage the emotions of those recounting their own experiences and of listeners. The outcome of attempted management is likely to be unsatisfactory for many of those involved in deliberations. Inclusion, representation, and social justice are integral to deliberative initiatives and to the principle of deliberative democracy. Leaving out those who are systemically disadvantaged and/or who cannot express their own voices in the early stages of deliberative processes does not necessarily guarantee that their needs will be addressed at subsequent levels, as this process for abortion reform so clearly demonstrates. Indeed, exclusions made early in deliberative processes may well continue through and be incorporated into legislative and constitutional changes (Side, 2020). Young's concept of social justice must be evident at all stages of deliberations, even those where divided loyalties, such as those to political parties, exist. Members of the Joint Committee of the Houses of the Oireachtas had no lesser obligations to inclusion and social justice. Finally, participatory processes cannot afford to continue to structure inclusion as a one-time occurrence. For example, the three-year government-led review of abortion reforms in Ireland, underway in 2021, is likely to have been much richer with direct input from deliberative processes that involve citizens, non-citizens, and those affected by the issues under consideration.

In the Citizens' Assembly process to repeal and replace the 8th Amendment in the Constitution, the Irish state recognised the value of public opinion in the formation of the Citizens' Assembly and a public referendum. With reference to the 8th Amendment, the Citizens' Assembly operated as an 'experiment[s] in institutional design' (Chambers, 2009: 323). Its democratic deliberations included members of the public who might otherwise have not been engaged in public discussions about abortion and its reform. Public deliberations indicate a first step towards citizen inclusion, but they also excluded some affected groups and did not significantly alter the ways the public and the Irish state relate to one another (Chambers, 2009: 324). In many ways, state bodies confirmed their power as arbiters and decision-makers over citizens' bodies and embodiment (Chambers, 2009: 324) and used their powers to exclude non-citizens. State bodies, including governments, exercised power in ways that contradicted the majority public opinion of Citizens' Assembly members. While the Citizens' Assembly on the 8th Amendment was a limited model for reform, its shortcomings offer valuable instruction for futures uses of citizens' assemblies in a systems approach and provides optimism about the future potential in public-state relations. While the Irish state, in this instance, did not succeed in altering their hierarchical nature of deliberation and decision-making, it left an open space for the possibility of more inclusive processes in determining the law and guidance for legal abortion access in the context of healthcare in future.

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