

How EU Membership Transformed Ireland's Socio-Legal Norms: The Case of Abortion

Federico Fabbrini

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In 1973, Ireland joined what would become the European Union (EU) in the first ever enlargement of the project of European integration. To say that 50 years of EU membership have been transformative for Ireland is an understatement. By all benchmarks considered, Ireland is a radically different country today than it was when it joined the EU.

Economically, in 1973 Ireland was by far the poorest member state, with an agricultural economy, lagging behind the other member states which had more developed industrial economies. Also thanks to a significant influx of EU regional and structural funds, and the transition to digital tech and financial services, Ireland has become today one of the most thriving economies of the EU and the Eurozone. In fact, notwithstanding the pandemic, Ireland was the only EU member state to grow in 2020, and, in the new EU 7-year budget cycle 2021-7, it became a net payer, rather than a net beneficiary, of EU fiscal transfers.

Politically, in 1973 Ireland was a marginal member state, still suffering from the legacy of centuries of British rule. Largely thanks to EU membership – and the dividends of the peace process in Northern Ireland reaped through the 1998 Belfast/ Good Friday Agreement – Ireland has acquired a role in EU affairs which far outweighs its small size. In fact, following Brexit, Ireland turned into a hub of EU decision-making, and today, despite its small population (5M) the country punches above its weight, filling key posts in the EU institutions, including the Presidency of the Eurogroup and the Chief economist of the European Central Bank.

However, arguably an even more remarkable change for Ireland occurred at the socio-legal level. As Fintan O'Toole has pointed out in his award winning book "[We Don't Know Ourselves](#)", in 1973, Ireland was a back-ward, conservative country, heavily dominated by the Roman Catholic Church's theology. The influence of religious doctrine imbued the 1937 Irish Constitution, which among others prohibited divorce. Legislation dating to the early years of the Irish state compelled women who got married to resign from work. And most famously, the 8th Amendment to the Irish Constitution, introduced in 1983, prohibited abortions in almost all circumstances – except when necessary to save the life of the mother, as the Irish Supreme Court held in the 1992 [X case](#).

Fifty years later, Ireland stands today as one of the most liberal, and progressive countries – not just in the EU, but arguably of the whole Western world. As is well known, also in response to the increasing awareness of the abuses of the Catholic clergy, in recent years the country consciously rejected its past, and moved

convincingly in the direction of greater equality. Indeed, a string of constitutional referendums paved the way for legalized divorce (1995), marriage equality (2015), abortion (2018), and blasphemy (2018), with a new ballot [announced for November 2023](#) remove reference from the Irish Constitution to role of the women in the family

As I have argued in my work, including in my recent article “The ‘European’ Future of American Abortion Law”, EU membership and the influence of European laws have a key role in explaining such profound transformations in Ireland’s social and legal norms. This influence at time was direct – as when in 1977, EU anti-discrimination law required Ireland to ditch its marriage bar for women in employment. Nevertheless, at other times the influence was indirect, and interplayed with domestic movement for change.

Abortion provides the best example of this. When Ireland introduced its abortion ban, European law seemed silent on the matter. Nevertheless, in the early 1990s, rulings by the European Court of Justice in [Grogan](#), and the European Court of Human Rights (ECtHR) in [Open Doors Counselling](#), began to edge the Irish abortion ban – allowing women in Ireland to travel overseas to seek abortion, as an EU service, and entitling them to receive information about a service lawfully provided out of state.

This led to a first round of legal reforms in Ireland, with the approval of the 13th and 14th amendments to the Irish Constitution in 1992 recognizing a right to interstate travel and a right to access information about abortion.

Moreover, while the Irish abortion ban ultimately withstood scrutiny for compliance with the European Convention of Human Rights (ECHR), in the landmark 2010 ruling in [A., B., & C. v. Ireland](#) the ECtHR held that Ireland had breached its positive obligation under the ECHR for failing to institute an effective process whereby a patient could obtain an abortion in the limited cases when it was entitled to it under the X doctrine. This force Ireland back again to the drawing board, and in 2013 the state adopted its first abortion law – the Protection of Life During Pregnancy Act – eventually regulating termination of pregnancy in some few cases in the state.

Needless to say, the Irish government also sought to fend off the influence of European law. In particular, during the Maastricht Treaty negotiations, Ireland secured a special Protocol designed to shield its abortion ban. Similarly, following the 2008 referendum rejecting the Lisbon Treaty, the European Council approved at Ireland’s request a declaration, confirming that the Treaty would not affect the Irish abortion prohibition. Yet, resistance to EU law only confirms the powerful transnational pressures that the EU wielded on Ireland’s socio-legal norms. In fact, the option to escape the Irish abortion ban that was offered by European law progressively undermined the fairness of a draconian prohibition that only applied to those disadvantaged women who had no means to travel overseas and oppressed those who could not remain ‘at home’ when undergoing the procedure.

As is well known, eventually in 2018 the Irish people voted in a landslide to remove the controversial procedure banning abortion. And the Health Regulation of Termination of Pregnancy Act—which entered into force in 2019 – implemented the referendum by permitting abortion any time in cases of risk to the woman’s health

and life, and fatal foetal abnormality, and introducing an early pregnancy termination at the request of the woman subject to the medical practitioner certification that the pregnancy has not exceeded 12 weeks. The Act sets a three-day waiting period before elective abortions, but no counselling process is required. As such, Ireland's abortion law is today (at least on the books) one of the most liberal across the EU.

Certainly, other factors played a role in the transformation of Ireland's abortion law. To emphasize the impact of European law does not imply to diminish the importance of grass-root women's activism for repealing the 8th Amendment, and indeed the significance of the bottom-up deliberative process led in 2017 by a citizen's assembly that paved the way to the abortion referendum. But there is no doubt that, in institutional terms, supranational law provided language, leverage and legitimacy to a domestic movement to repeal the abortion ban. The EU, and the ECHR for that matter, required Ireland to adapt, and empowered human rights activists who fought for domestic change.

As Ireland celebrates its 50th anniversary in the EU, its trajectory represents an example of how European integration can transform countries, and promote an adjustment of socio-legal norms, also in sensitive ethical domains. Needless to say, comparative research is needed to assess whether what is true for Ireland holds for other member states too. For example, 20 years since joining the EU, Malta's abortion laws have not been loosened, and Poland's have even been tightened. Yet, Ireland's success story in the EU – its economic, political and socio-legal growth – is a testament of the power of European integration, and an explanation why EU membership continues to be craved (pace Brexit) from Ukraine to the Balkans and beyond.

