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The Northern Irish Assembly and the Abortion Issue, 1967-2017

Abstract: On 25 May 2018, the Republic of Ireland voted in a landslide referendum to repeal the 8th amendment of its Constitution which had, since 1983, put the "right to life of the unborn" on an equal status with the life of a pregnant woman, leading to a near-total ban on abortion, even in cases of rape, incest or fatal foetal abnormality. This historic result, in a country with one of the most restrictive abortion regimes in Europe, instantaneously led to calls for similar reform in Northern Ireland both from within and outside the Province as the region was now the only one in the British Isles where terminations were outlawed except in the most exceptional circumstances. Although these claims were finally heard when, on 22 October 2019, section 9 of the Northern Ireland (Executive Formation) Act provided for the decriminalisation of abortion in Northern Ireland, the British government's argument until the very last minute was that 1) the issue was one that belonged to the devolved Northern Ireland Assembly whose prerogatives should not be undermined, 2) abortion was "pre-eminently a matter for the people of Northern Ireland" to decide. This position on the part of the central government has led us to examine in this paper the reasons for the Northern Irish exception as well as the mechanisms which have been at play in Stormont for the past fifty years and have prevented any liberalisation of the legislation.

Keywords: abortion, Northern Ireland, Northern Ireland Assembly, Stormont, women's rights.

Résumé : *Le 25 mai 2018, la République d'Irlande s'est prononcée massivement par un référendum en faveur de l'abrogation du 8e amendement de sa Constitution qui, depuis 1983, mettait le « droit à la vie de l'enfant à naître » sur un pied d'égalité avec la vie d'une femme enceinte et entraînait, de fait, une interdiction quasi totale de l'avortement, y compris en cas de viol, inceste ou anomalie fœtale mortelle. Ce résultat historique dans un pays avec l'un des régimes d'avortement les plus restrictifs en Europe a instantanément suscité des appels en faveur d'une réforme similaire en Irlande du Nord, qui se trouvait être désormais la seule région où les avortements étaient interdits excepté dans les circonstances les plus exceptionnelles. Bien que ces revendications aient finalement été entendues avec le vote, le 22 octobre 2019, de l'article 9 du Northern Ireland (Executive Formation) Act, qui prévoit la dépénalisation de l'avortement en Irlande du Nord, l'argument du gouvernement britannique a jusqu'à la toute dernière minute été que 1) la question relevait de l'assemblée dévolue d'Irlande du Nord, dont les prérogatives ne devaient pas être remises en cause, 2) le choix revenait « avant tout à la population d'Irlande du Nord ». Cette prise de position du gouvernement central nous a amenée à examiner, dans cet article, les raisons de l'exception nord-irlandaise ainsi que les mécanismes qui se sont exercés à Stormont au cours des cinquante dernières années et qui ont empêché toute libéralisation de la législation.*

Mots clés : avortement, Irlande du Nord, Assemblée nord-irlandaise, Stormont, droits des femmes.

> Saying "Leave abortion to the Northern Ireland Assembly" is like saying "Leave it to the Taliban to sort out women's rights". Goretti Horgan, pro-choice group Alliance for Choice[1]

On 25 May 2018, the Republic of Ireland voted in a referendum to repeal the 8th amendment of its Constitution which had, since 1983, applied a near-total ban on abortions, including in cases of rape, incest or fatal foetal abnormality (FFA). This historic result, in a country with one of the most restrictive abortion regimes in Europe, instantaneously led to calls for similar reform in Northern Ireland both from within and outside the Province as the region, whose relevant legislation dated back to 1861, was now the only one in Ireland and the United Kingdom where terminations were outlawed except in the most exceptional circumstances. Although these claims were finally heard when, on 22 October 2019, section 9 of the Northern Ireland (Executive Formation) Act[2] provided for the decriminalisation of abortion in Northern Ireland, the position of the British government until the very last minute was that abortion was a devolved matter and should be dealt with by the Northern Ireland Assembly. Considering the fact that the latter had been suspended since January 2017 and had always been staunchly opposed to such a move anyway, this amounted in the eyes of many to condemning the issue to the status quo[3].

The aim of this paper is not to enquire into the reasons why the British government over the past fifty years refused to legislate on the issue and accepted a *de facto* inequality between citizens of Northern Ireland and those of the rest of the UK, a question already quite extensively covered by Jennifer Thomson[4]. The complex relationship between the central government and a devolved administration, the fear of endangering the peace process or – as illustrated by British Prime Minister Theresa May's refusal to act in the wake of the referendum in the Republic[5] – political expediency have provided many reasons for women's rights

1. "Pro-Choice Group to Lobby Westminster MPs", *The Irish Times*, 7 October 2008.
2. Northern Ireland (Executive Formation etc) Act 2019, section 9: "Abortion etc: implementation of CEDAW recommendations", on line: http://www.legislation.gov.uk/ukpga/2019/22/section/9/enacted.
3. Martin McGuinness, Sinn Féin's Deputy First Minister, had resigned on 9 January 2017 following the Renewable Heat Incentive scandal. The subsequent refusal of Sinn Féin to nominate a new candidate for the position led to the First Minister being also removed from office and to a collapse of the executive. The Assembly was dissolved on 26 January and an election called for 2 March 2017.
4. Jennifer Thomson, *Abortion Law and Political Institutions: Explaining Policy Resistance*, Bath, Springer International Pub, 2019.
5. "It is important to recognise that the people of Northern Ireland are entitled to their own process which is run by elected politicians", May's spokesman declared on behalf of the government a few days after the referendum in the Republic; "Our focus is restoring a democratically accountable devolved government in Northern Ireland so that locally accountable politicians can make decisions on behalf of the public they represent" (Benjamin Kentish, "Theresa May Will Not Intervene to Help Legalise Abortion in Northern Ireland, Downing Street Says", *The Independent*, 29 May 2018,

being repeatedly dismissed. Westminster's argument that 1) the issue is one that belongs to the devolved Northern Ireland Assembly whose prerogatives should not be undermined, 2) abortion is "pre-eminently a matter for the people of Northern Ireland" to decide[6] however makes it worthwhile examining the reasons for the Northern Irish exception as well as the mechanisms which have been at play in Stormont for the past fifty years and have prevented any liberalisation of the legislation[7]. While the constitutional specificity of Northern Ireland in terms of citizenship is well documented and the progress and setbacks regarding abortion have come under close scrutiny both in the national press and medical journals in the past three years, no such overview has yet been provided[8].

Of particular interest to us will be the period beginning with the Abortion Act 1967, at the time when Stormont was still responsible for its own legislation, and ending with the suspension of the Assembly in January 2017. After looking at the gender and religious specificities of the Assembly, we will examine the nature of the debates that were held before and after the Good Friday Agreement and finally question the representativeness of the major political parties on the issue.

The constitutional situation

The legislation governing abortion in Northern Ireland is criminal in nature and stems primarily from statute law and common law, with the most relevant pieces dating back respectively to the Offences against the Person Act 1861[9] and the Criminal Justice Act (Northern Ireland) 1945[10]. According to these, performing an abortion is an offence except for the sole purpose of preserving the life of the

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on line: https://www.independent.co.uk/news/uk/politics/northern-ireland-abortion-ban-irish-referendum-theresa-may-uk-laws-a8374741.html).

6. Allan Preston, "Boris Johnson Declares 'Union Comes First' and Vows to Prevent Hard Border", *Belfast Telegraph*, 3 July 2019, on line: https://www.belfasttelegraph.co.uk/news/northern-ireland/boris-johnson-declares-union-comes-first-and-vows-to-prevent-hard-border-38276555.html.
7. The different assemblies that will be considered are: the Northern Irish Parliament of 1922-1974, the Constitutional Convention of 1975-1976, the Assembly in 1982-1986 and the post-Good Friday Agreement Assembly.
8. See, among others: Clare Dyers, "Decriminalisation of Abortion", *British Medical Journal*, 356:j1485, 23 March 2017; Clare Dyers, "MPs Vote to Liberalise Abortion Rights in Northern Ireland", *British Medical Journal*, 2019;366:l4674, 11 July 2019; Carolyn Bailie, "Abortion in Northern Ireland", *International Journal of Gynecology and Obstetrics*, vol. 143, no. 2, November 2018, p. 131-133; Talha Burki, "Northern Ireland Likely to Legalise Abortion", *The Lancet*, vol. 394, no. 10195, 27 July 2019, p. 290; Angel Li, "Northern Ireland Deadlock Impedes Abortion Rights Progress", *The Lancet*, vol. 393, no. 10183, 4 May 2019, p. 1794.
9. Offences against the Person Act 1861, "Attempts to procure abortion": "58. Administering drugs or using instruments to procure abortion" and "59. Procuring drugs, &c. to cause abortion", on line: http://www.legislation.gov.uk/ukpga/Vict/24-25/100/contents.
10. Criminal Justice Act (Northern Ireland) 1945, Part II, section 25: "Punishment for child destruction", on line: http://www.legislation.gov.uk/apni/1945/15/section/25.

mother[11] and is theoretically punishable with imprisonment for life (section 58), including in cases of foetal abnormalities (even if fatal), rape and incest.

The Offences Against the Person Act 1861 was the last piece of legislation common to Ireland and the rest of the UK. From the time of the partition in 1921 a legal discrepancy emerged as Northern Ireland was granted its own Parliament and executive. Thus, when in 1929 exception was added to the statute book in the UK with the Infant Preservation Act, which allowed the abortion of "a child capable of being born alive" if carried out "in good faith for the purpose only of preserving the life of the mother"[12], it was explicitly stated that this act would only apply to England and Wales and "[should] not extend to Scotland[13] or Northern Ireland"[14].

It should be noted at this point that, under the Government of Ireland Act 1920, Westminster had theoretically retained the right to legislate for Northern Ireland, including over devolved issues[15]. Yet, as Vernon Bogdanor explains, Northern Ireland was granted a huge degree of autonomy, not only because convention made it difficult for the British Parliament to legislate on devolved matters but also because of a 1923 ruling by the Speaker of the House of Commons that "parliamentary questions could not be asked on matters for which responsibility had been transferred to Northern Ireland, since no British minister could be held responsible for transferred matters"[16]. Attempts by backbenchers to discuss controversial issues such as the property-vote in local government elections or religious discrimination were thus ruled out of

11. Criminal Justice Act (Northern Ireland) 1945, Part II, section 25(1): "Subject as hereafter in this sub-section provided, any person who, with intent to destroy the life of a child then capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction, and shall be liable on conviction thereof on indictment to penal servitude for life: / Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother".
12. Infant Life (Preservation) Act 1929, article 1.1, on line: https://www.legislation.gov.uk/ukpga/Geo5/19-20/34/section/1.
13. Scotland has its own legal system, which differs in form, substance and foundations from that of England and Wales. Neither the Offence Against the People Act 1861 nor the Infant Life (Preservation) Act 1929 therefore applied to the region. The law and practice of abortion in Scotland today however is the same as in England and Wales, mostly as a result of the implementation of the Human Fertilisation and Embryology Act 1990.
14. The act was later extended to Northern Ireland by section 25(1) of the Criminal Justice Act (Northern Ireland) 1945 (http://www.legislation.gov.uk/apni/1945/15/section/25). An enormous degree of responsibility was placed on individual practitioners however as, under section 25(2), "evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at that time pregnant of a child then capable of being born alive". It is only in 2016 that guidelines were issued, following lengthy legal action by the Family Planning Association (FPA) of Northern Ireland (Department of Health, Social Services and Public Safety, "Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland", March 2016, on line: https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/guidance-termination-pregnancy.pdf).
15. Government of Ireland Act 1920, section 75, on line: https://www.legislation.gov.uk/ukpga/Geo5/10-11/67/section/75/enacted.
16. Vernon Bogdanor, *Devolution in the United Kingdom*, Oxford, Oxford University Press, 1999, p. 72-73.

order and on no occasion between 1921 and 1967 did Westminster legislate for Northern Ireland on devolved issues. Abortion was no exception.

Similarly, when the Abortion Act 1967 dramatically relaxed the law in Britain by permitting abortion up to 28 weeks' gestation in specific circumstances[17], the Parliament of Northern Ireland at Stormont was still responsible for its own legislation and chose to simply ignore the example set by the rest of the UK[18]. The restoration of Direct Rule under the terms of the Northern Ireland (Temporary Provisions) Act 1972[19], which handed the government of Northern Ireland over to the Northern Ireland Office in the face of a deteriorating security situation, did not bring about any change. Although acts of Parliament could now logically be extended to the Province, the successive British governments, fearing problems of democratic accountability, failed to legislate.

Finally, while the 1998 Belfast Agreement provided Northern Ireland with a power-sharing Assembly, responsibility for abortion remained a reserved-power policy for the next twelve years as it was still currently classified as criminal law and was only to be devolved to Northern Ireland in 2010 as part of wider policing and justice powers under the Hillsborough Castle Agreement[20]. Following that date, the Assembly staunchly and repeatedly opposed any liberalisation of the law, thus contributing to maintaining a situation in which Northern Irish women did not enjoy the same reproductive rights as citizens in the rest of the UK. For those facing an unwanted pregnancy, the choice remained the same as it had been for the past fifty years: embarking on a costly journey to a private clinic in England, Scotland or Wales or, if still in the very early stages of the pregnancy, buying abortion pills online illegally from Internet-based providers in order to self-abort at home[21]. It is thus estimated that in 2017/2018 more than 800 women

17. The 1967 act did not repeal the 1861 legislation but merely "stated those situations in which abortion would henceforth be legal" (sections 1.1 and 5.1). In England and Wales, abortion is still criminalised under the Offences Against the Person Act 1861 and in Scotland under common law. The Abortion Act 1967 however provided a framework for the circumstances in which abortion could be lawfully performed in the three regions.
18. The Northern Irish Parliament of 1922-1974 records no debate at all with a reference to abortion.
19. Northern Ireland (Temporary Provisions) Act 1972, on line: http://www.legislation.gov.uk/ukpga/1972/22/schedules/enacted. The Parliament of Northern Ireland was indefinitely prorogued and its legislative powers transferred to the British government. The political institutions that were suspended by this act (the Parliament of Northern Ireland and the post of Governor) were formally abolished the following year by the Northern Ireland Constitution Act 1973.
20. Agreement at Hillsborough Castle, 5 February 2010, on line: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136435/agreement_at_hillsborough_castle_5_february_2010.pdf. Under the Northern Ireland Act 1998 responsibility for policing and justice had been reserved to Westminster to be transferred at a later stage. The Hillsborough Castle Agreement, signed on 5 February 2010, paved the way for devolution of policing and justice functions. These two powers were transferred to the Northern Ireland executive on 12 April 2010 following a cross-community vote in the Assembly on 9 March.
21. Flora Bloomer, Kellie O'Dowd, "Restricted Access to Abortion in the Republic of Ireland and Northern Ireland: Exploring Abortion Tourism and barriers to Legal Reform", *Culture, Health & Sexuality. An International Journal for Research, Intervention and Care*, vol. 16, no. 4, 2014, p. 366-380.

from Northern Ireland crossed the Irish Sea to clinics in Britain to terminate pregnancies[22], a figure which rose by 22.3% to more than 1,000 following the announcement made in June 2017 by the British government that it would fund abortions for women ordinarily resident in Northern Ireland via the Government Equalities Office[23]. In this respect, proponents of legislative intervention by the British government did not fail to point out the anomaly that the NHS in England should fund free abortions for Northern Irish women who did not, according to the legislation of the Province, have a right to them.

Table 1 – Number of abortions per year in England and Wales where the woman undergoing the termination has stated her country of origin as Northern Ireland[24].

Year	1986	2004	2007	2008	2009	2011	2012	2014	2017	2018
Number of abortions	1,190	1,280	1,343	1,173	1,123	1,007	905	837	861	1,053

Not only did this situation repeatedly raise the issue of inequality of treatment between Northern Irish and other UK citizens, but it also led to accusations of "systemic violations of human rights" against the British government by the Committee

22. Department of Health and Social Care, "Abortion Statistics, England and Wales: 2017", June 2018, revised December 2018, on line: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/763174/2017-abortion-statistics-for-england-and-wales-revised.pdf.
23. The announcement was a late inclusion in the Queen's Speech. Dozens of Conservative MPs had expressed support for an amendment tabled by Labour MP Stella Creasy to allow Northern Irish women access to National Health Services (NHS)-funded abortions in Great Britain. The government, faced with the prospect of the amendment passing and a possible Tory rebellion, announced that it would enact the policy without a vote being needed and the amendment was withdrawn ("Northern Irish Women Win Access to Free Abortions as May Averts Rebellion", *The Guardian*, 29 June 2017, on line: https://www.theguardian.com/world/2017/jun/29/rebel-tories-could-back-northern-ireland-abortion-amendment). The Central Booking System went live on 8 March 2018. In November 2018 the Welsh government announced that it too would offer free abortions to women from Northern Ireland through the NHS.
24. Figures in the table are compiled from: Family Planning Association factsheet on abortion practice and provision in Northern Ireland, December 2015, p. 10, on line: http://www.fpa.org.uk/sites/default/files/northern-ireland-abortion.pdf; Amnesty International, "Barriers to Accessing Abortion Services", 2015, p. 16, on line: https://www.amnesty.org.uk/files/eur_45_0157_2015_northern_ireland_-_barriers_to_accessing_abortion_services_pdf.pdf; Department of Health and Social Care, "Abortion Statistics, England and Wales: 2017", p. 19; Department of Health and Social Care, "Abortion Statistics, England and Wales: 2018", 13 June 2019, p. 21, on line: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808556/Abortion_Statistics__England_and_Wales_2018__1_.pdf. It is commonly held that these figures are an underestimation, as they are based on the addresses provided to the clinics by the patients and many women give false addresses for fear of being detected. The figure, in 2015, according to the Family Planning Association, was nearer 2,000 per year (factsheet on abortion practice and provision in Northern Ireland, December 2015, p. 9). What may partly account for the fact that the number of abortions performed to women from Northern Ireland in England fell from 1,343 in 2007 to 837 in 2014 is the fact that abortion pills, although illegal to buy across the UK, became readily available online.

on the Elimination of Discrimination against Women (CEDAW)[25] following a series of legal action by Human rights bodies, including Amnesty International and the Northern Ireland Human Rights Commission. Thus, the inquiry report on access to termination of pregnancy in Northern Ireland published in February 2018 denounced the fact that

> The situation gives NI women three deplorable options: (a) undergo a torturous experience of being compelled to carry a pregnancy to full term; (b) engage in illegal abortion and risk imprisonment and stigmatisation; or, (c) undertake a highly stressful journey outside NI to access a legal abortion. Women are thus torn between complying with discriminatory laws that unduly restrict abortion or risk prosecution and imprisonment[26].

A couple of months later, on 7 June 2018, the Supreme Court added[27] that the law of Northern Ireland was incompatible with the right to respect for private and family life guaranteed by article 8 of the European Convention on Human Rights and urged "[t]hose responsible for ensuring the compatibility of Northern Ireland law with the Convention rights" to "recognise and take account of these conclusions […] by considering whether and how to amend the law"[28].

These decisions, coming in the wake of the Irish referendum, contributed to gathering support within Westminster for a reform of the abortion laws of Northern Ireland. Yet, as was made clear by the Northern Ireland Secretary's response on the occasion of the emergency debate called on 5 June 2018, the government refused to take action, insisting that the issue should be considered by the "democratically elected Assembly in Northern Ireland"[29]. This, in the eyes of many, seemed to

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25. The Committee on the Elimination of Discrimination against Women (CEDAW) is a body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women adopted in 1979 by the United Nations General Assembly. It examines state reports, individual complaints, inter-state complaints, and inquiry requests, and release general recommendations or statements.
26. CEDAW, "Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women", CEDAW/C/OP.8/GBR/1, 23 February 2018, p. 18, on line: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared Documents/GBR/INT_CEDAW_ITB_GBR_8637_E.pdf.
27. In a case taken by the Northern Ireland Human Rights Commission, the Belfast Hight Court ruled in 2015 that abortion laws in Northern Ireland were incompatible with human rights, but that the law can only be changed by legislators. That decision was appealed to the Supreme Court, which found the current law incompatible with human rights. However the case was dismissed on procedural grounds.
28. Supreme Court of the United Kingdom, [2018] UKSC 27 [135] (Lord Mance), 7 June 2018, quoted in Tom Frost, "Abortion in Northern Ireland: Has the Rubicon Been Crossed?", *Liverpool Law Review*, vol. 39, no. 1-2, July 2018, p. 193, on line: https://doi.org/10.1007/s10991-018-9214-1.
29. "Just as we have debated in this House the laws that ought to apply here, so the democratically elected Assembly in Northern Ireland must continue to consider this fundamental issue, listening to the views of the people of Northern Ireland. Otherwise, as my right hon. Friend the Member for Basingstoke (Mrs Miller) suggested, we will be in danger of disfranchising 1.8 million citizens of the UK. […] My focus is therefore on working closely with Northern Ireland's political parties

condemn the issue to the status quo: not only because the Assembly had been suspended for more than a year but also, and mostly, because it had always been staunchly opposed to a liberalisation of the legislation.

The Northern Ireland Assembly: a male and a religious preserve

Some specificities of the Northern Ireland Assembly must at that stage be considered before examining this resistance to change.

First of all, as illustrated by several studies[30], Northern Irish politics have long been male-dominated. From the moment the Province was given its own parliament in 1921 until the imposition of Direct Rule in 1972, only nine women served in Stormont. Following 1972, the situation hardly improved: each of the three short-lived regional bodies that were created by different British governments (the Assembly of 1973-1974, the Constitutional Convention of 1975-1976 and the 1982-1986 Assembly) was composed of 78 seats and included at most 4 women (5%). As for the historic election of 1998, only 15 women were elected out of the 108 MLAs, i.e. 13.8%, as compared with 40% in Wales, 37% in Scotland and 18% in Westminster, making Stormont the assembly with the lowest levels of female representation in the UK. This underrepresentation, while owing to the usual structural and social barriers commonly identified for Western legislatures, has been reinforced by the conservative societal values of Northern Ireland and the specific circumstances linked with conflict which have led the "the cleavages of nationality and religion […] to eclipse a cross-cutting gender cleavage"[31]. Men, being more likely to be involved in violence during the period of the Troubles, were also more likely to participate in politics, a tendency which the power-sharing Parliament, based as it was on the principle of bringing organisations formerly involved in violence to engage in peaceful political participation, did nothing to improve[32].

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to restore the devolved government that the public want" (Parliament of the United Kingdom, House of Commons, Karen Bradley, Offences against the Person Act 1861, 5 June 2018, vol. 642, column 221, on line: https://hansard.parliament.uk/commons/2018-06-05/debates/440FFC61-87D6-49AA-8758-91398C56BA0E/OffencesAgainstThePersonAct1861.

30. Margaret Ward, Democratic Dialogue, "The Northern Ireland Assembly and Women: Assessing the Gender Deficit", December 2000, on line: http://cain.ulst.ac.uk/dd/papers/women-assembly.htm; Grainne McCoy, "Women, Community and Politics in Northern Ireland", in *Gender, Democracy and Inclusion in Northern Ireland*, Carmel Roulston, Celia Davies (eds.), Basingstoke, Palgrave, 2000, p. 3-23; Rick Wilford, "Women and Politics in Northern Ireland", *Parliamentary Affairs*, vol. 49, no. 1, January 1996, p. 41-54, also published in *Women in Politics*, Joni Lovenduski, Pippa Norris (eds.), Oxford, Oxford University Press, 1996, p. 43-56.
31. Jonathan Tonge, Máire Braniff, Thomas Hennessey, James W. McAuley, Sophie A. Whiting, *The Democratic Unionist Party: From Protest to Power*, Oxford, Oxford University Press, 2014, p. 191.
32. Barriers to participation in politics have been particularly important for women from the Protestant, Unionist, and / or Loyalist community (Danielle Roberts, "'Mum-of-two, 40': But Women Rise to the Top in Northern Irish Politics", Democratic Audit UK, 11 April 2017, on line: https://www.democraticaudit.com/2017/04/11/mum-of-two-40-but-women-rise-to-the-top-in-northern-irish-politics).

In March 2014 the Northern Ireland Assembly carried a motion relating to women in politics and calling for the "introduction of a training and support programme to encourage more female candidates to stand for election"[33]. The Assembly and Executive Review Committee that was established to make a report to the Secretary of State, the Assembly and the Executive Committee on the operation of Parts III and IV of the Northern Ireland Act 1998 also concluded that the under-representation of women in politics in Northern Ireland was "a serious issue which must be addressed as matter of urgency" and recommended that "political parties should consider developing targeted membership strategies to encourage more women to get involved and become members of their parties"[34].

As it turned out, the number of women MLAs increased quite dramatically between 2011 and 2017. While they constituted just 18.5% of MLAs in 2011, this figure rose to an unprecedented 27.5% at the May 2016 election without the use of quotas and 30% following the March 2017 election (see Fig. 1 and 2)[35], a figure which is now identical to that of the House of Commons[36]. Following Peter Robinson's resignation from the head of the Democratic Unionist Party (DUP) in December 2015 and Martin McGuinness's from that of Sinn Féin in January 2017, Northern Ireland's two major parties are now both led by women, Arlene Foster and Michelle O'Neill.

Most of these changes, however – with the exception of Foster's election as leader of the DUP and her subsequent appointment as First Minister –, happened after the Assembly was suspended and their potential impact on the abortion debate cannot as a consequence be measured. Besides, women's underrepresentation in Northern Irish politics over the past fifty years cannot alone account for the Assembly's attitude towards abortion. One idiosyncrasy of the Northern Irish Assembly, which must be considered in particular, is that of the influence of religion among its members.

Although, according to the last census, the number of people who do not identify with any religion has risen (from 11% in 1991 to nearly 17% in 2011),

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33. Northern Ireland Assembly, Order Paper, Reference: OP 196/11-15, 10 March 2014, Private Members' Business, Motion: Women in Politics, Proposed: "That this Assembly recognises the lack of female representation in politics and public life; further recognises the positive outcomes that result in tackling this inequality, when support and training programmes are put in place to encourage more female candidates to stand in elections; and calls for the introduction of a training and support programme to encourage more female candidates to stand for election" (http://www.niassembly.gov.uk/assembly-business/order-papers/session-2013-2014/10-march-2014).
34. Assembly and Executive Review Committee, "Report on Women in Politics and the Northern Ireland Assembly", 17 February 2015, respectively p. 27 and 2, on line: http://www.niassembly.gov.uk/globalassets/documents/assembly-and-executive-review-2011---2016/reports/report-on-women-in-politics.pdf.
35. The 2017 election returned a total of 90 MLAs as opposed to 108 previously. This change was a consequence of the Northern Ireland Miscellaneous Provisions Act 2014, which also increased the term of the Assembly from four to five years and also ended dual mandates for MLAs.
36. Siobhan Fenton, "Northern Ireland Election Results: Record Number of Female MLAs Take Seats at Stormont", 6 March 2017, on line: https://www.independent.co.uk/news/uk/politics/northern-ireland-election-results-female-mla-record-stormont-a7614891.html.

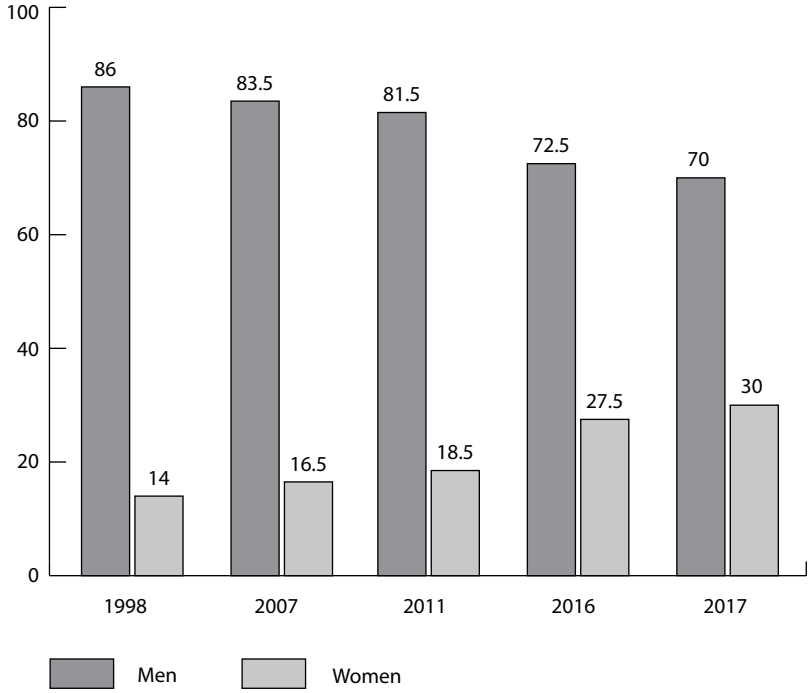

Fig. 1 – Gender representation in the Assembly 1998-2017.

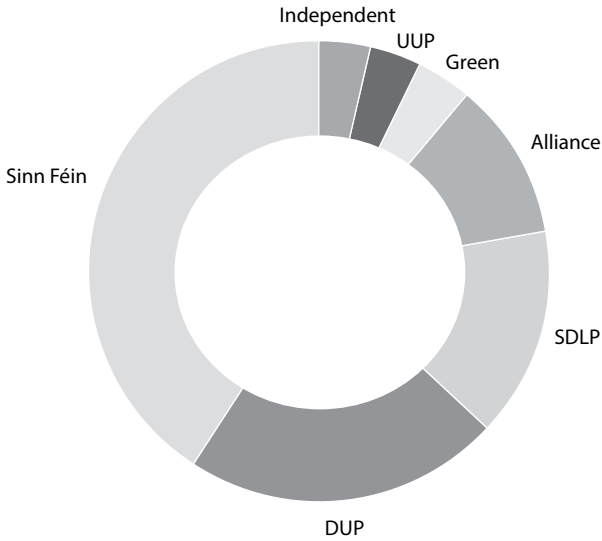

Fig. 2 – Number of women MLAs by political party (March 2017 election).

83% of people in Northern Ireland still identify as religious[37] and the region is the most observant in the UK in terms of church attendance. This character is reflected in the Northern Irish Assembly where, although organisationally speaking, most political parties have eschewed formal ties with the Churches, faith has been shown to be an important element for a large majority of MLAs. In 2015, Ulster Unionist leader Mike Nesbitt thus described himself as a "struggling Christian" and declared he believed it was his responsibility as an elected politician to bring his religious values to the decisions he took in the Assembly, even if they sometimes risked going against public opinion[38]. The historical relationship between the Ulster Unionist Party (UUP), which governed Northern Ireland between 1921 and 1972 and provided the first First Ministers to the power-sharing executive established by the Belfast Agreement, and the Orange Order, one of the institutional pillars of the Protestant Establishment in Northern Ireland, contributed for many years to further blur the lines between religion and party politics (it was only in 2005 that the Order severed these century-old links over UUP support for the Good Friday Agreement)[39].

One notable exception to the separation between Churches and parties that is particularly relevant to the issue of abortion is provided by the DUP, which superseded the UUP as first party of the Province on the occasion of the 2003 election and was therefore the party holding the majority of seats in the Assembly at the time abortion became a devolved issue. Its close ties with the Orange Order and more importantly the Free Presbyterian Church created in 1951 by Ian Paisley, the future founder and leader of the party, have made it a unique case in the British and Irish context. For some fifty years, Paisley, who was both head of the Free Presbyterian Church and of the DUP until 2008[40], used the party as a political vehicle for his Church's fundamentalist Protestantism. As a consequence, "the DUP's moral and political agendas", Tonge *et al.* explain in their study of the party, "appeared largely indistinguishable, influenced by a fundamentalist version of Protestantism eschewed by the larger Protestant Presbyterian and Church of Ireland denominations"[41].

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37. Northern Ireland Statistics and Research Agency, "Short Story – Religion", December 2014, on line: http://www.ninis2.nisra.gov.uk/public/census2011analysis/religion/index.aspx.
38. "On occasion that will mean I'm in tune with the majority of public opinion, and at times it means you'd be going against it" (Mike Nesbitt, quoted in Andy West, "A Question of Faith: Can Politics and Religion Mix in Northern Ireland?", BBC News, 30 June 2015, on line: https://www.bbc.com/news/uk-northern-ireland-33330092).
39. Jonathan Tonge, Máire Braniff, Thomas Hennessey, James W. McAuley, Sophie A. Whiting, *The Democratic Unionist Party*…, p. 151.
40. When the DUP agreed to share power with Sinn Féin following the 2006 St. Andrews Agreement, Paisley was forced to leave his position as leader of his Church for having struck a deal with Irish republicans. Following his January 2008 forced retirement and pressure from party insiders, he also stood down as DUP leader and First Minister of Northern Ireland in May 2008.
41. Jonathan Tonge, Máire Braniff, Thomas Hennessey, James W. McAuley, Sophie A. Whiting, *The Democratic Unionist Party*…, p. 133.

Free Presbyterianism, while a very small Church[42], is greatly over-represented within the DUP and more particularly so among its elected representatives. 36.8% of Assembly members elected in 2011 belonged to it, a percentage which, prior to the Good Friday Agreement, amounted to 56%[43]. The Church offers literal interpretations of scripture, considering the Bible as "the true word of God"[44]. It is these Protestant and Christian principles that account for the party's opposition to any liberalisation of abortion or same-sex marriage and this reliance on the Bible can be observed in the parliamentary speeches of some DUP members as will be developed in the next part.

Stormont and abortion before the Good Friday Agreement

From 1967, when the Abortion Act liberalised abortion in England, Scotland and Wales, to the introduction of Direct Rule on 28 March 1972 under the terms of the Northern Ireland (Temporary Provisions) Act 1972, abortion was never discussed in the Parliament of Northern Ireland[45]. Three regional bodies were then created by successive British governments as part of a series of attempts to restore a devolved administration: the Assembly of 1973-1974, the Constitutional Convention of 1975-1976 and the 1982-1986 Assembly. While the priorities were understandably elsewhere for the first two short-lived assemblies, abortion was nevertheless debated once by the 1982-1986 Northern Ireland Assembly.

The Assembly, whose election on 20 October 1982 definitively established a five-party system[46], had been set up as a new attempt to shift the political deadlock that had lasted since the fall of the power-sharing executive in 1974. Its role was one of "scrutiny, consultation and deliberation"[47]. In addition to the Assembly's Committees on security and devolution, six statutory Committees were set up (education, agriculture, economic development, environment, health and social services, finance and personnel)[48] which undertook substantive investigations.

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42. Its 10,068 members identified in the 2011 census amounted to 1% of Northern Ireland's population (Jonathan Tonge, Máire Braniff, Thomas Hennessey, James W. McAuley, Sophie A. Whiting, *The Democratic Unionist Party*…, p. 137).
43. *Ibid*., p. 139.
44. Jonathan Tonge, "Faithful Unionists: The Democratic Unionist Party in Northern Ireland", *Political Insight*, vol. 10, no. 2, June 2019, p. 26.
45. The 1965 election to the House of Commons of Northern Ireland had returned 36 UUP, 9 Nationalists, 2 Labour, 2 Republican Labour Party, 1 National Democratic Party, 1 Liberal Party, 1 Independent. The 1969 Northern Ireland general election was held on Monday 24 February 1969. It was the last election to the Parliament of Northern Ireland before its abolition by the Northern Ireland Constitution Act 1973. It returned 36 UUP, 6 Nationalists, 3 Independent Unionists, 3 Independents, 2 Labour, 2 Independent Labour.
46. The election had returned the following: UUP: 26 seats; DUP: 21 seats; Social Democratic and Labour Party: 14 seats; Sinn Féin: 5 seats; Alliance: 10 seats; Ulster Popular Unionist Party: 1 seat; Independent Unionist: 1 seat.
47. Vernon Bogdanor, *Devolution in the United Kingdom*, p. 104.
48. Cornelius O'Leary, Sidney Elliott, R. A. Wilford, *The Northern Ireland Assembly, 1982-1986: A Constitutional Experiment*, London, Palgrave Macmillan, 1989, p. 96.

Reserved matters – which included criminal law and therefore abortion – could be discussed but the debates on motions tabled by members – the normal procedure for a general debate – tended to concentrate on a small number of policy areas such as the constitutional position of Northern Ireland, the economy, and social issues. Apart from debates on substantive motions, the remaining Assembly business comprised the scrutiny of Draft Orders in Council referred by the Secretary of State or discussion of reports from Committees[49].

Despite substantive work undertaken by the Assembly during those four years[50] at no moment was a liberalisation of abortion considered. The issue was only discussed once, on 29 February 1984, when Reverend Ivan Foster, Free Presbyterian Minister and DUP member, put forward a motion to oppose the extension of the 1967 Abortion Act to Northern Ireland. Only twenty-one members from the DUP and the Alliance Party were present, as the UUP was temporarily boycotting the Assembly and the Social Democratic and Labour Party (SDLP) and Sinn Féin had not taken their seats. The contents of the debate, therefore, is not representative of the whole Assembly at the time but it nevertheless provides a good survey of the DUP's arguments. In that respect, their decision to debate an – unlikely – extension of the British legislation to Northern Ireland should also probably be taken as a mark of discontent with the then British government.

Foster quoted from the Bible with which, he said, he was "much more at ease" than "with an Order Paper":

> I propose: That this Assembly opposes the extension of the Abortion Act 1967, or any like legislation, to Northern Ireland. […] Since the 1967 legislation, some two million children have been killed in the United Kingdom, all in the name of humanity, all in the name of kindness and care, all in the name of advance and liberty. A verse of scripture prophesies a time when men will put light for darkness and darkness for light and nothing demonstrates more clearly that that terrible age is indeed dawning upon us, than the extermination of two million unborn children in the name of humanity and in the name of medical advancement, and in the name of enhancing the lives of our citizens[51].

Religious arguments were also extensively used by William Thomson, UUP member for the Mid-Ulster constituency and a Methodist, who also stated his belief that "the Bible is man's rule" and "what is contained in the Scriptures ought to be our guide in life". Abortions, he remarked, were mostly carried out on unmarried girls between the ages of 16 and 24. These were therefore guilty of having had sexual relationships outside marriage, which was "contrary to the Word of God", "sinful and will be judged by Almighty God".

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49. *Ibid.*, p. 187.
50. *Ibid.*, p. 173.
51. Ivan Foster speech against abortion made in the Northern Ireland Assembly on Wednesday 29 February 1984 (consulted on "The Burning Bush" website on 14 August 2019 but no longer available online).

> I do not believe that the girls who get pregnant are innocent. […] I do believe that in the breast of every woman there is knowledge of what is right and what is wrong and knowledge that to act in this fashion is wrong[52].

The high number of abortions carried out illustrated, in his opinion,

> […] the ungodliness of our nation, the depravity of our age and how men and women have forgotten the things of God […] When you reject the things of God, the things of the Devil come to the forefront[53].

DUP party whip George Seawright[54], member of the Free Presbyterian Church and of the Orange Order added:

> In Northern Ireland political circles we have heard much of discrimination, we have heard much about biased legislation, and we have heard much about political philosophies that do not accept the rights of minorities, but I can think of no minority group more tragic than those innocent infants within the womb who this year, like every other year, and perhaps in future years, will be put to death simply because someone, with very twisted logic, believes that a parent has the right to put her own child to death[55].

The motion was voted by 20 to 1 and the Assembly dissolved a couple of months later.

The Northern Ireland Assembly and abortion debates since the Good Friday Agreement

The Belfast / Good Friday Agreement, signed on 10 April 1998 after five years of a peace process initiated with the Downing Street Declaration, called for the establishment of three "strands" of institutional governance, the first of which was the creation of an elected assembly and of an executive responsible for most local matters and based on the principle of power-sharing between the two communities[56].

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52. William Thomson, quoted in The Northern Ireland Abortion Law Reform Association, *Abortion in Northern Ireland: The Report of an International Tribunal*, Belfast, Beyond the Pale, 1989, p. 27.
53. *Ibid*.
54. He was to lose the party whip in June 1984 after a series of scandals, among which declaring that Roman Catholics who objected to the singing of the British national anthem were "Fenian scum" and should be "incinerated" together with their priests.
55. Northern Ireland Assembly debates, Tuesday 20 June 2000, on line: http://archive.niassembly.gov.uk/record/reports/000620c.htm.
56. The second was the establishment of a North / South Ministerial Council. The third called for a British-Irish Council to "be established under a new British-Irish Agreement to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands" (Northern Ireland Office, The Belfast Agreement, 10 April 1998, on line: https://www.gov.uk/government/publications/the-belfast-agreement).

As part of its "Rights, Safeguards and Equality of Opportunity" section, the agreement asserted "the right of equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity". The British government committed to incorporate the European Convention on Human Rights (ECHR) into the law of Northern Ireland, which was done through the Human Rights Act in 2003, and to the establishment of a Northern Ireland Human Rights Commission, which came into existence on 1 March 1999.

The Northern Ireland Assembly, composed of 108 members elected for the first time in June 1998 by single transferable vote, was given full legislative powers on most economic and social matters considered as "devolved" or "transferred" matters. Policing and justice powers however – which included abortion – were only transferred to the Assembly on 12 April 2010 under the Hillsborough Agreement[57]. Before that date, two major debates over the issue had already been held however.

The first one was on 20 June 2000, when a motion against extending the Abortion Act 1967 was proposed by DUP MLA Jim Wells[58]. While the Assembly had no power to legislate over the issue, Wells accounted for his move as a reaction to hints that former Secretary of State Mo Mowlam would try to extend the 1967 act to the Province. "A heavy No vote in the assembly will make it very, very difficult for government to even start this process", he explained[59]. This first debate was therefore to be understood as a kind of warning against a possible intervention by Westminster and aroused considerable interest (the Speaker had to warn about time limit given the "substantial number of Members who want[ed] to participate in the debate" which was in the end to last for almost four hours)[60]. The motion was supported by Nationalists and Unionists alike with only the Progressive Unionist Party opposing it. An amendment was put forward by the Women's Coalition asking that the Assembly delay its decision until the Health, Social Services and Public Safety Committee had presented a report to the Chamber after taking advice from medical and education experts. It was however defeated by 43 votes to 15. Interestingly, no woman member voted against the amendment or in favour of

57. The Hillsborough Castle Agreement was itself following the St. Andrews Agreement, reached in 2006 after three years of suspension of the Assembly and which had advocated devolution of policing and justice powers within two years from restoration of the executive.
58. Northern Ireland Assembly debates, Tuesday 20 June 2000, on line: http://archive.niassembly.gov.uk/record/reports/000620b.htm#2.
59. "NI Assembly Debates Abortion Law", BBC News, 20 June 2000, on line: http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/797684.stm. Wells referred to the number of abortions carried out in the UK since 1967 as a "legalised carnage" to be compared to the number of "Jews […] murdered in Hitler's death camps": "Since the 1967 Act became law, 5.3 million abortions have been carried out in Great Britain – more than the populations of Northern Ireland and the Irish Republic combined, and almost the same number as the number of Jews who were murdered in Hitler's death camps. The main purpose of my motion is to ensure that this legalised carnage is not permitted in Northern Ireland by way of an extension of the 1967 act to this part of the United Kingdom, and I am moving it today in support of the right to life of the unborn child, knowing that both communities are perhaps more united on this issue than on any other" (Northern Ireland Assembly debates, Tuesday 20 June 2000).
60. *Ibid.*

the DUP's motion. Joan Carson, from the UUP, explained why she could not vote with her party:

> For the record, I must state that abortion is not a satisfactory way to avoid unwanted pregnancies. It should never be seen as the way out.
>
> The debate on the controversial issue of abortion and its effects on women in Northern Ireland is of importance to the whole community – women in particular. It is ironic that a man, who will never have to go through childbirth or face the personal consequences of unwanted pregnancy, is proposing the motion.
>
> The 1967 legislation was made by men for women and any future changes need to be made in consultation with the women of Northern Ireland.
>
> The Assembly may pass the motion, but how is this motion going to persuade women that abortion is not an option? Abortion is here whether we agree with it or not[61].

The second debate, which started in the autumn of 2007, centred this time on the draft guidelines for medical staff that had been published at the beginning of the year[62]. Six years before, in May 2001, the Family Planning Association of Northern Ireland had initiated legal action against the Department of Health, Social Services and Public Safety (DHSSPS) for "failing in its statutory duty to ensure that all women had equal access to reproductive healthcare services"[63]. In response to the Court's ruling and following formal investigation into the provision of termination services, the DHSSPS had produced draft guidance for health professionals on termination of pregnancy in Northern Ireland and released the document for consultation in January 2007. It was around the formulation of the guidelines (which was that abortion was legal when a woman's mental or physical health was in "grave" danger of "serious and permanent damage"), deemed as too permissive, that a motion was introduced on 22 October 2007 by Iris Robinson for the DUP. Once again, DUP MLAs were the most vocal in their opposition to abortion; they were also those resorting most to religious arguments, with Keith Buchanan denouncing the 1967 Abortion Act as "ungodly" and Alex Easton asserting that a "moral, and Christian, principle is embedded in the heart of the vast majority of people in Northern Ireland, who consider a child to be a precious gift from God". Unionists however were not alone in their opposition to the guidelines and Sinn Féin John O'Dowd made it clear that his party did not support abortion. Once again, the DUP's aim was, in Wells' words "to send the clear message to Westminster that the people of Northern Ireland do not want the liberalisation of abortion in Northern Ireland in any shape or form"[64]. It was resolved

> That this Assembly opposes the introduction of the proposed guidelines on the termination of pregnancy in Northern Ireland; believes that the guidelines are flawed;

61. "NI Assembly Debates Abortion Law", BBC News, 20 June 2000.
62. Northern Ireland Assembly debates, Monday 22 October 2007, on line: http://archive.niassembly.gov.uk/record/reports2007/071022.htm#11.
63. Family Planning Association factsheet on abortion practice and provision in Northern Ireland, p. 4-5.
64. Northern Ireland Assembly debates, Monday 22 October 2007.

> and calls on the Minister of Health, Social Services and Public Safety to abandon any attempt to make abortion more widely available in Northern Ireland[65].

Redrafted guidelines were then issued, including warning to doctors that they would be liable to life imprisonment if they carried out abortions subsequently ruled as having been outside the legal parameters.

Following the transfer of policing and justice powers to the Assembly in April 2010, three more debates were held over the issue of abortion. The first one was in March 2013, when a DUP member (Paul Givan) proposed to amend the Criminal Justice Bill (NI) that was being debated so as to restrict "lawful abortions to National Health Services premises, except in cases of urgency when access to NHS premises is not possible and where no fee is paid". The aim was to ban abortions performed by private healthcare clinics such as Marie Stopes, which played an important role in ensuring access to lawful abortions (mostly as access to the NHS at the time was severely limited by the failure of the DHSSPS to publish Termination of Pregnancy Guidance)[66]. The proposed amendment, while it received a majority backing from MLAs, did not have sufficient cross-community backing to pass however as a "petition of concern"[67] was put forward by Sinn Féin, the Alliance Party and the Green Party[68].

Two years later, on 2 June 2015, during the consideration stage of the Justice Bill, a similar amendment with a view to tighten the law was made. It proposed once again

> [...] to restrict lawful abortions to NHS premises except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid,

65. *Ibid.*
66. Northern Ireland Assembly debates, Official Report (Hansard), 1 March 2013, on line: http://www.niassembly.gov.uk/assembly-business/official-report/reports-12-13/12-march-2013/#3.
67. Any vote taken by the Assembly can be made dependent on cross-community support if a petition of concern is presented to the Speaker. A petition of concern may be brought by thirty or more MLAs expressing their concern about a matter which is to be voted on by the Assembly. In such cases, a vote on proposed legislation will only pass if supported by a weighted majority (60%) of members voting, including at least 40% of each of the nationalist and unionist designations present and voting. Effectively this means that, provided enough MLAs from a given community agree, that community (or a sufficiently large party in that community) can exercise a veto over the Assembly's decisions. The purpose is to protect each community from legislation that would favour the other community (Northern Ireland Act 1998, c. 47, Part IV, Proceedings etc., section 42, on line: http://www.legislation.gov.uk/ukpga/1998/47/section/42).
68. When Jim Wells attempted to propose the amendment again the following year, Amnesty International UK stepped in and asked the Northern Ireland Assembly's Justice Committee to reject the full amendment, declaring that the "restrictive abortion laws and practices and barriers to access safe abortion are gender-discriminatory, denying women and girls treatment only they need" (UN Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 24, article 12 of the Convention (women and health), § 14 and 31 (c), quoted in Amnesty International UK, "Justice Act – Jim Wells' Amendment. Submission to the Northern Ireland Assembly Justice Committee", September 2014, on line: https://www.amnesty.org.uk/files/aiuk_justice_ctte_submission_justice_act_jim_wells_amendment_2014_0.pdf).

> and to include an additional option to the existing legislation to provide for a period of 10 years imprisonment and a fine on conviction[69].

Amendment 34 was introduced by the DUP Chair of the Justice Committee, Alastair Ross, on behalf of the committee. Amnesty International, the Northern Ireland Human Rights Commission, Alliance for Choice and Women's Aid, among others, voiced their opposition while the Regulation and Quality Improvement Authority raised a number of issues, including the fact that adoption of the amendment would be contrary to article 8 of the European Convention on Human Rights and article 17 of the International Covenant on Civil and Political Rights. There were no other circumstances, they argued, in which people were forced to use only a public health facility and interpretation of the word "urgent" was unclear[70].

Once again, a petition of concern was submitted to block the amendment and was backed by Assembly members from Sinn Féin, the Green Party, Alliance and NI21[71]. Sinn Féin's position since its 2012 conference had evolved from downright opposition to a policy of allowing abortion in both parts of Ireland under certain circumstances. At the party's 2015 *Ard Fheis*, a motion to allow termination in cases of fatal foetal abnormality backed by the party's leadership and central council had been endorsed by a comfortable majority of delegates[72] while the sexual crime exception appeared to be based upon a long-established support for legislating for the X case[73]. The DUP's position bore no such exception. In a radio interview, back in August 2012, former Health Minister Jim Wells had argued that the ban in Northern Ireland on most abortions must be upheld – even in instances of rape.

> That is a tragic and difficult situation but should the ultimate victim of that terrible act – which is the unborn child – should he or she also be punished for what has happened by having their life terminated? No[74].

With one exception, all these debates were therefore triggered by attempts to *restrict* the existing legislation, not to bring Northern Ireland's abortion laws in line with the rest of Britain. Only on 10 February 2016 was such a proposal made

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69. Northern Ireland Assembly, Official Report, Tuesday 2 June 2015, on line: http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/06/02&docID=236057#1267718.
70. *Ibid*.
71. This short-lived political party was founded in 2013 and wound up in 2016.
72. Lise hand, "Sinn Fein Votes to Support Abortion in Cases of Fatal Foetal Abnormality", *The Independent*, 7 March 2015, on line: https://www.independent.ie/irish-news/politics/sinn-fein-votes-to-support-abortion-in-cases-of-fatal-foetal-abnormality-31049036.html.
73. Irish Supreme Court, *A.G. v. X* [1992] IESC 1; [1992] 1 IR 1, 5 March 1992, on line: https://www.globalhealthrights.org/wp-content/uploads/2013/04/1992_SC_AttorneyGeneral-v-X.pdf. The case was a landmark Irish Supreme Court case which established the right of women in the Republic of Ireland to have an abortion if the pregnant woman's life was at risk because of pregnancy, including the risk of suicide.
74. Jim Wells, quoted in Adrian Rutherford, "DUP's Jim Wells: Abortion Should Be Ruled Out for Rape Victims", *Belfast Telegraph*, 25 August 2012, on line: https://www.belfasttelegraph.co.uk/news/northern-ireland/dups-jim-wells-abortion-should-be-ruled-out-for-rape-victims-28785234.html.

when Stewart Dickson and Trevor Lunn from the Alliance Party moved to legalise abortion in cases of foetal abnormality and to allow abortions in cases of sexual crime on the occasion of the consideration stage of the Justice (No. 2) Bill. For the past two years, the case of Sarah Ewart had brought publicity to the particularly traumatic case of women facing fatal foetal abnormalities and having had to seek a termination in England[75]. It had also led the Justice Minister to launch a consultation on changes that might be brought to the law on medical termination of pregnancy, whose results suggested that there was considerable public support for these[76]. Sinn Féin MLA and former Minister of Education Caitriona Ruane argued on that occasion that, as legislators, MLAs "should, first and foremost, provide legislation that is human rights-compliant" and recalled that article 8 of the European Convention on Human Rights, which provides a right to respect for one's "private and family life", was currently "breached in the North by the general prohibition on abortions in cases of fatal foetal abnormalities and pregnancies that are a consequence of sexual crime"[77]. Reference was also made to the findings of recent polling commissioned by Amnesty International that indicated a significant majority of people were in favour of changes in the law on these narrow grounds[78]. Both amendments were nevertheless defeated by 59-40 and 64-30 respectively after a five-hour debate[79].

Political parties, religion and public opinion

Lisa Smyth underlined in 2006 how politicians "who might otherwise divide along Catholic / Protestant or (Irish) nationalist / (British) unionist lines […] appeared to form a united, non-sectarian front in opposing sexual and reproductive rights

75. Stewart Dickson introduced his motion saying: "Many of you here have indicated your support personally to Sarah Ewart. Today is your chance to make good on those pledges of support. I made her a promise when I spoke to her that I would try to do something, and this is me trying to do that something. The decision that we have to take is undoubtedly a considerable one, but it pales into insignificance compared with the decision that Sarah Ewart was forced to make" (Northern Ireland Assembly, Official Report (Hansard), Justice (No. 2) Bill: Consideration Stage, Wednesday 10 February 2016, vol. 112, no. 5, p. 80, on line: http://data.niassembly.gov.uk/HansardXml/plenary-10-02-2016.pdf).
76. Department of Justice, Criminal Policy Branch,"The Criminal Law on Abortion: Lethal Fetal Abnormality and Sexual Crime. Response to the Consultation and Policy Proposals", April 2015, on line: https://www.justice-ni.gov.uk/sites/default/files/publications/doj/summary-of-responses-on-abortion-consultation-april-2015.pdf.
77. Northern Ireland Assembly, Official Report, Wednesday 10 February 2016, on line: http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2016/02/10&docID=258728.
78. "Northern Ireland: Nearly 3/4 of Public Support Abortion Law Change – New Poll", Amnesty International UK press releases, 18 October 2016, on line: https://www.amnesty.org.uk/press-releases/northern-ireland-nearly-34-public-support-abortion-law-change-new-poll-0.
79. Northern Ireland Assembly, Official Report (Hansard), Justice (No. 2) Bill: Consideration Stage, Wednesday 10 February 2016, vol. 112, no. 5, p. 120, on line: http://data.niassembly.gov.uk/HansardXml/plenary-10-02-2016.pdf.

and services" and how state regulation of sexuality and reproduction were indeed "one of the few areas where cross-community agreement can occur in Northern Ireland"[80]. As it was, until 2018, the major political parties in the Assembly offered a united front on the issue of abortion, although to varying degrees (Sinn Féin's position, as seen previously, was to allow abortion in cases of sexual abuse and foetal fatal abnormality).

The referendum in the Republic changed that. Sinn Féin's *Ard Fheis*, which was exceptionally moved to June that year, adopted a motion in support of abortion within "a limited gestational period" so as to keep in line with the Republic's legislation. The party's Stormont leader Michelle O'Neill announced that the criminalisation of women must end through the repeal of sections 58 and 59 of the Offences against the Person Act 1861 and that "legislative change should be brought about by locally elected MLAs and should be brought about in the Assembly"[81]. Particularly controversial among party members was the decision to apply a party whip on the issue ("No-one is saying members can't have a conscience and you're entitled to have your viewpoint respected, but there is a difference between personal views and our role as legislators", delegates were told[82]).

The other party to apply party whip on the issue of abortion is the DUP itself, the driving force behind legislative resistance to change. The party's MLAs had always voted against abortion law reform in the past and contributed to some of the most radical statements against abortion. All the other major parties however now allowed a vote of conscience on the issue. That includes the SDLP, which reaffirmed their "pro-life" policy on the occasion of a special conference in Maghera on 19 May 2018 (ahead of the referendum in the Republic) but voted to give its members a free vote on all abortion-related issues; the UUP, which viewed the issue as a matter of personal conscience for elected representatives and party members, and the Alliance Party, whose former leader, David Ford, had introduced the Abortion (Fatal Foetal Abnormalities) Bill in December 2016 (the bill would have allowed women the right to a termination up to 24 weeks in cases of fatal foetal abnormalities but fell with the collapse of the Northern Ireland Executive in January 2017). As for the Green Party (which obtained two seats in the 2017 election), it seeks the full decriminalisation

80. Lisa Smyth, "The Cultural Politics of Sexuality and Reproduction in Northern Ireland", *Sociology*, vol. 40, no. 4, August 2006, p. 664.

81. Amanda Ferguson, "Abortion in Northern Ireland: Where Do the Parties Stand?", *The Irish Times*, 7 June 2018, on line: https://www.irishtimes.com/news/social-affairs/abortion-in-northern-ireland-where-do-the-parties-stand-1.3522879.

82. Jayne McCormack, "Sinn Féin Votes to Change Abortion Policy", BBC News, 16 June 2018, on line: https://www.bbc.com/news/uk-northern-ireland-44507054. Party leader Mary Lou McDonald confirmed that while everyone in the party was entitled to a position of conscience on abortion when it came to making law for society and formulating public policy elected representatives are bound to a "democratic, considered, collective position" (Amanda Ferguson, "Arlene Foster Says Abortion Result Will Have No Impact on North", *The Irish Times*, 27 May 2018, on line: https://www.irishtimes.com/news/ireland/irish-news/arlene-foster-says-abortion-result-will-have-no-impact-on-north-1.3510406).

of abortion in any circumstances and its elected representatives have consistently outlined this position in the Northern Ireland Assembly and in local media[83].

Commenting on the decision of the Assembly in April 2016, Marion Woods of the anti-abortion group Life Northern Ireland declared that the lack of support for the 1967 act in the Assembly was a reflection of the will of the people.

> We elect representatives to our Stormont government for a reason – people vote for these parties and these parties have voted to keep the law as it stands[84].

This argument, according to which their opposition to the liberalisation of abortion law was a reflection of the views of the people, has also been used by the political representatives of Northern Ireland themselves, both at Stormont and Westminster, to account for their systematic votes against any extension of the 1967 act.

Parallel to the debates held within the Assembly since 1998, surveys and opinion polls in the past twenty years have shown however an evolution of public opinion in Northern Ireland towards greater support for a liberalisation of their country's abortion laws and a consequently growing gap between the people of Northern Ireland and their elected representatives on the issue. The phenomenon is particularly striking if we consider the two proposals to legalise abortion in cases of foetal abnormality and sexual crime that were defeated in February 2016.

As early as 2008, a survey carried out by the Family Planning Association in Northern Ireland found that nearly two-thirds (62%) of the people polled thought that abortion should be legal in cases of rape or incest. Ten years later, the results of the first major polling on the issue after the Republic of Ireland had voted to legalise the practice were published by Amnesty International and revealed that 80% now agreed that a woman should have the choice of abortion in cases of rape or incest and 73% that the woman should have the choice of abortion in cases of fatal foetal abnormality[85]. More generally, 65% now believed that having an abortion should not be a crime and 80% thought a woman should have the choice of an abortion when her health was at risk (there were no differences according to religion).

The question of the representativeness of the major political parties becomes all the more disputable when one looks at breakdown by political party allegiance provided by the 2016 Northern Ireland Life and Times Survey[86], which included a specific module on abortion in its 2016 edition, and by the report released by

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83. Green Party Policy, "Health", "Values and Principles", on line: https://policy.greenparty.org.uk/he.html.
84. Jon Kelly, "Why Are Northern Ireland's Abortion Laws Different to the Rest of the UK?", BBC News Magazine, 8 April 2016, on line: https://www.bbc.com/news/magazine-35980195.
85. The poll of Northern Irish adults was conducted through a Cognisense Omnibus Survey, between August and September 2018, with a representative sample of 1,000 Northern Irish adults ("Northern Ireland Abortion: 75% of UK Public Want Government to Change Law – New Polls", Amnesty International UK press releases, 10 October 2018, on line: https://www.amnesty.org.uk/press-releases/northern-ireland-abortion-75-uk-public-want-government-change-law-new-polls).
86. Northern Ireland Life and Times Survey 2016, on line: https://www.ark.ac.uk/nilt/2016/Abortion.

Amnesty International UK that same year[87]. Thus, while DUP MLAs and ministers continue to be the driving force behind legislative resistance to change, these surveys show that 73% of their voters support access to abortion in cases of rape or incest[88] and 80% in cases of fatal or serious foetal abnormality. Similar discrepancy is to be verified among the SDLP and the UUP, the other two parties that describe themselves as "pro-life" (even though these now leave it to their members to vote according to their conscience), whose voters massively support abortion in cases of fatal or serious foetal abnormality (75% and 86% respectively) or when the life of the mother is at risk (74% of SDLP supporters, 90% of UUP supporters). Conversely, the fact that only 74% of Sinn Féin's voters agree that abortion should be allowed in cases of fatal or serious foetal abnormality (a percentage which is actually lower than that of other parties' members) might lead us to think that in adopting a pro-choice stance in *all* circumstances, Sinn Féin might have been motivated by political considerations (following the policy decided by the Republic) more than by the will to represent its electorate's stance on the issue.

Conclusion: the new political landscape of the Assembly

All in all, between 1967 and 2017, the Assembly of Northern Ireland, under its various forms, sat for less than twenty years[89]. That it should have failed in such a short time to legislate on an issue of relatively secondary importance in the context of the Province's troubled political situation may appear hardly surprising. Yet, as this study has shown, on no account can the discrepancy between Northern Ireland and the rest of the UK in terms of legislation be put down to a mere lack of interest in the issue. To the exception of the first two assemblies of 1973-1974 and 1975-1976, during the very rare instances when it sat, the Assembly found time to introduce and vote on motions related to abortion, including when it was not constitutionally competent, as was the case between 2000 and 2010. These motions all aimed at *opposing* any extension of the British law on abortion to Northern Ireland and were not a reaction to a real but rather to a *perceived* threat and, most of all, the occasion to mark discontent with the British government, warn against possible intervention and "send a clear message to Westminster"[90]. Following the transfer of policing and justice powers in 2010, the focus shifted to restricting the existing law. Once again, however, the debates were the occasion to present England as a moral danger and stress an alleged specificity of the Northern Irish people while ignoring the growing support for a liberalisation of abortion laws among public opinion.

87. "Northern Ireland: Nearly 3/4 of Public Support Abortion Law Change – New Poll".
88. *Ibid*.
89. Taking into consideration the various suspensions that took place between late 1999 and January 2017.
90. Northern Ireland Assembly debates, Monday 22 October 2007.

On taking office in January 2016, Arlene Foster vowed again to prevent the Abortion Act 1967 being extended to the region[91] and in 2018 insisted that the referendum should have no impact upon the law in Northern Ireland as it was "for the Northern Ireland Assembly to debate and decide such issues"[92]. That was not to be the case. In July 2019, in the face of the Prime Minister's refusal to take action, two amendments tabled by Labour backbenchers were added to the Northern Ireland (Executive Formation etc.) Bill. The bill was initially a simple technical government bill connected to budgets and elections for the Assembly, but Labour MP Stella Creasy seized the opportunity to force the British government to legislate for the extension of same-sex marriage and abortion rights to Northern Ireland should devolution not be restored by 21 October of the same year[93]. In the event, section 9(2) of the Northern Ireland (Executive Formation) Act came into force on 22 October 2919, providing for the decriminalisation of abortion in Northern Ireland through the repeal of sections 58 and 59 of the Offences against the Person Act 1861 and for a moratorium on abortion-related criminal prosecutions from 22 October[94]. The UK government was also placed under a legal duty, in the ongoing absence of a restored Northern Ireland Executive, to create a new legal framework for abortion in Northern Ireland by 31 March 2020. In the interim period, women seeking abortion would continue to travel to England for medical terminations.

In the foreword to the consultation paper published by the government in November 2019, the Secretary of State for Northern Ireland reiterated the government's commitment to restoring devolution. He declared:

> There is no substitute to having locally elected and accountable politicians, debate and pass laws that impact on the lives of people living in Northern Ireland. This is particularly important on sensitive matters such as abortion law, where locally elected members of the Northern Ireland Assembly should be debating and deciding on the shape and scope of any reform[95].

Véronique Molinari

Université Grenoble Alpes

91. "I would not want abortion to be as freely available here as it is in England and don't support the extension of the 1967 act", she told *The Guardian* (Henry McDonald, "No Extending Abortion Act to Northern Ireland, First Female Leader Says", *The Guardian*, 6 January 2016).
92. "Abortion Referendum Has No Impact on Law of Northern Ireland: Arlene Foster", 27 May 2018, *Belfast Telegraph*, on line: https://www.belfasttelegraph.co.uk/news/northern-ireland/abortion-referendum-has-no-impact-on-law-of-northern-ireland-arlene-foster-36951287.html.
93. Clare Dyers, "MPs Vote to Liberalise Abortion Rights in Northern Ireland".
94. Other relevant laws relating to the termination of pregnancy would remain in place however, such as section 25(1) of the Criminal Justice Act (Northern Ireland) 1945 (Government of the United Kingdom, "A New Legal Framework for Abortion Services in Northern Ireland", November 2019, on line: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844394/Government_consultation_-__A_new_legal_framework_for_abortion_services_in_Northern_Ireland__November_2019_.pdf).
95. *Ibid.*, p. 2.