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## Citizenship and sexual difference: Abortion in Northern Ireland

### Obywatelstwo i różnica seksualna: aborcja w Irlandii Północnej

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#### Abstract

Abortion was legalised in the United Kingdom in 1967. However, this fundamental right to bodily autonomy did not extend to the citizens of the United Kingdom who reside in Northern Ireland. It was not until 2019 that abortion was decriminalized in Northern Ireland. Looking at the concept of citizenship from a feminist perspective, this paper questions if the Northern Irish population are only partial citizens of the United Kingdom due to their lack of abortion rights.

**Keywords:** abortion rights, citizenship, Northern Ireland, United Kingdom, gender equality

#### Streszczenie

Aborcja została zalegalizowana w Zjednoczonym Królestwie w 1967 roku. Jednak to prawo do autonomii cielesnej nie objęło obywateli Zjednoczonego Królestwa zamieszkujących Irlandię Północną. Dopiero w 2019 roku aborcja została zdekryminalizowana w Irlandii Północnej. Patrząc na koncepcję obywatelstwa z perspektywy feministycznej, niniejszy artykuł stawia pytanie, czy mieszkańcy Irlandii Północnej są tylko częściowymi obywatelami Zjednoczonego Królestwa ze względu na brak prawa do aborcji.

**Słowa kluczowe:** prawo do aborcji, obywatelstwo, Irlandia Północna, Wielka Brytania, równość płci

## Introduction

I have dual citizenship of the United Kingdom and the Republic of Ireland. My mother is Irish, my father is English, and I was born in England. My mother has lived in the UK for 35 years. She is not a British citizen, nor does she wish to be one. Due to the United Kingdom deciding to leave the European Union in 2016 (Brexit), last year I applied for an Irish passport to enable me to live and work within the European Union. Along with thousands of British passport holders, I became a dual citizen of the UK and Ireland. The Irish government recently announced that 2022 set new records for the Irish passport office, with ‘passport applications from Northern Ireland and Great Britain [being] 100,000 out of over 1.15 million total applications received this year’.<sup>1</sup> People from Northern Ireland have an equal choice between having Irish or British citizenship, or both. As stated in article 1 of the 1998 Belfast/Good Friday Agreement, the treaty recognises ‘the birthright of the people of Northern Ireland to identify and be accepted as British or Irish, or both, and to hold both British and Irish citizenship’.<sup>2</sup> This peace accord intended to ensure equal treatment of all citizens. Brexit will undermine the equal status of the Northern Irish population because those who chose only British nationality, will no longer have access to EU citizens’ rights, splitting the community.

Abortion was legalised in the United Kingdom in 1967, and as citizens of the United Kingdom, it would be fair for Northern Irish women to assume that they also would also gain autonomy over their bodies. However, abortion was only decriminalised in Northern Ireland, decades later, in 2019. Since then, Northern Ireland’s devolved government has failed to establish the services which were legislated for, meaning safe and legal abortion is still practically non-existent for Northern Irish citizens. Northern Irish women have been, and continue to be, denied reproductive rights and access to healthcare, in contrast to other UK citizens who share the same passport.

By looking at the concept of citizenship from a feminist perspective, are northern Irish women only partial citizens of the UK? The concept of citizenship, and specifically UK citizenship in Northern Ireland, must be considered when exploring this question. The history of abortion politics in Northern Ireland is a testament to the dynamic interplay between reproductive rights and citizenship. While significant progress has been made in decriminalizing abortion, challenges and debates continue, underscoring the ongoing relevance of this issue in discussions of citizenship and gender equality. Moreover, the historical, political, and social impact of Brexit and the Covid-19 pandemic must be taken into account when addressing abortion rights in Northern Ireland today. Brexit and the

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<sup>1</sup> Irish Department of Foreign Affairs, *2022 Sets New Record for Irish Passports*, December 29, 2022, <https://www.gov.ie/en/press-release/fe216-2022-sets-new-record-for-irish-passports> [access: 10.10.2023].

<sup>2</sup> Northern Ireland Office, *The Belfast Agreement*, April 1998, <https://www.gov.uk/government/publications/the-belfast-agreement> [access: 10.10.2023].

Covid-19 pandemic have influenced discussions around healthcare, access to services, and the legal framework of reproductive rights in the region. They have drawn attention to the need for resilient and adaptable healthcare systems and legal protections for reproductive rights, all while intertwining with larger debates about citizenship, identity, and the UK's constitutional makeup. The concept of partial citizenship serves as a powerful lens through which to assess the intersection of reproductive rights, gender equality, and the evolving legal and social landscape in Northern Ireland. It is a reminder that true citizenship must encompass full equality and the right to make decisions about one's own body.

## Citizenship and feminist critiques

T.H. Marshall was a British sociologist, and his scholarship on citizenship shaped post-war thinking on the subject. Marshall conceived the notion of citizenship in terms of three sets of rights that define the citizen status of individuals of a state as: civil/legal, political, and social.<sup>3</sup> Marshall defines citizenship as 'a status bestowed on those who are full members of a community.'<sup>4</sup> All those who possess the status are equal with respect to the rights and duties with which the status is endowed'.<sup>5</sup> However, citizenship is not just about rights, but about the recognition and respect of those rights to all. Yuval-Davis considers citizenship 'not just in the narrow formalistic sense of having the right to carry a specific passport, but as an overall concept which sums up the relationship between the individual and state'.<sup>6</sup>

Many feminist scholars deem Marshall's theory on citizenship problematic, as it assumes a universal category of citizen. For example, Lister argues, reproductive rights 'embody the principle of differentiated universalism', which can be described as 'group-specific rights essential to women's ability to enjoy full and equal universal citizenship'.<sup>7</sup> Feminists have argued that Marshall's theory on citizenship only reflects the perspective of working-class white males, and fails to integrate gender and sexual difference<sup>8</sup>, race<sup>9</sup>, class<sup>10</sup> and sexuality.<sup>11</sup> Thus, not considering the reality of women as second-class citizens who do not have the same civil/legal, political, and social rights as men. Walby's critique not only questions the legitimacy of all three stages within Marshall's concept of citizenship but also underscores how Marshall's framework directly contradicts the historical trajectory

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<sup>3</sup> T. H. Marshall, *Citizenship and Social Class and Other Essays*, Cambridge University Press, Cambridge 1950.

<sup>4</sup> *Ibidem*.

<sup>5</sup> N. Yuval-Davis, *Gender & Nation*, SAGE Publications, London 2010 [1997].

<sup>6</sup> *Ibidem*.

<sup>7</sup> R. Lister, *Citizenship: Feminist Perspectives*, Palgrave Macmillan, New York 2003 [1997].

<sup>8</sup> S. Walby, *Is Citizenship Gendered?*, "Sociology" 1994, Vol. 28, No. 2, pp. 379–395; R. Lister, *Citizenship...*, *op. cit.*

<sup>9</sup> N. Yuval-Davis, *Gender & Nation*, *op. cit.*

<sup>10</sup> *Ibidem*.

<sup>11</sup> D. Richardson, *Citizenship and Sexuality: What Do We Mean by "Citizenship"?*, "Counterpoints" 2012, Vol. 367, No. 20, pp. 219–228.

of women's rights.<sup>12</sup> For instance, she points out that, 'First World women typically attain political citizenship before civil citizenship, a reversal of the pattern observed in men,' a point that fundamentally challenges Marshall's thesis.<sup>13</sup> Walby goes on to discuss the structuring of the private/public dichotomy and the consequence that this structure has had on women's citizenship rights. For example, Walby looks at pensions, and how the public/private divide and women's care obligations in the private sphere has meant that women do not have access to pensions at the same level as men.<sup>14</sup> This line of inquiry leads Walby to pose crucial questions: 'Is being a carer compatible with being a full citizen? If not, then what should change? Should women only be entitled to citizenship if they behave like men and have lifetime commitment to paid employment? And if so, what are the implications for those who need caring? Or should the rules of the welfare system be changed so that paid employment is not the only or main route of access to decent support in old age?'.<sup>15</sup> This feminist critique of the conditions underpinning citizenship underscores the prevailing notion of a citizen as an individual who engages in paid labour within the public sphere. This exemplifies the ongoing gender disparities entrenched within the structures of citizenship and the corresponding entitlements that citizens are afforded, all within the framework of a heteronormative, nuclear, patriarchal society.

## Abortion as a civil/social right under citizenship

Despite the acknowledged constraints of Marshall's theory of citizenship, it can serve as an initial framework for examining abortion as a fundamental citizenship right, especially when considering the intersection with sexual difference. As Horgan and O'Connor state, 'civil, political and social rights are interdependent but not always mutually supportive in practice, and this is particularly evident in the case of abortion'.<sup>16</sup> The liberty of a person and property rights relate to civil citizenship, and social and economic welfare relate to social rights.<sup>17</sup> Conflict between abortion laws and citizenship rights of women means that access to bodily autonomy remains a struggle for women in contemporary society. Civil/legal and social rights (under the Marshallian construction of citizenship) are therefore being undermined if we consider women to be full citizens who have bodily autonomy. Lister highlights the concept of bodily autonomy as part of civil citizenship and argues that traditional notions of 'private' matters, are in fact 'preconditions of women's full and free access to the public sphere'.<sup>18</sup>

Reproductive rights represent a vital component of an individual's right to bodily integrity, and this has become a central focus of contemporary feminism. As Horgan

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<sup>12</sup> S. Walby, *Is Citizenship...*, *op. cit.*

<sup>13</sup> *Ibidem.*

<sup>14</sup> *Ibidem.*

<sup>15</sup> *Ibidem.*

<sup>16</sup> G. Horgan, J. O'Connor, *Abortion and Citizenship Rights in a Devolved Region of the UK*, "Social Policy & Society" 2014, Vol. 13, No. 1, pp. 39–49.

<sup>17</sup> *Ibidem.*

<sup>18</sup> R. Lister, *Citizenship...*, *op. cit.*

and O'Connor argue, 'the failure to recognise abortion as a civil and social right has the consequence of providing a field in which opposing forces continue to contest its legitimacy'.<sup>19</sup> Therefore, the autonomy of female citizens is reflected in their ability to be full members of society, and if their reproductive rights are not considered a civil or social right, then women would be only partial citizens. Moreover, if abortion is legally considered a citizen's right but the services and facilities are not implemented and made readily available, then the right for women to have an abortion is irrelevant. Horgan and O'Connor point out 'socio-economic status can be readily recognised as a constraint on the ability to exercise legal rights in the absence of free legal aid or the constraint on the exercise of equal rights to health care in the absence of publicly funded health services'.<sup>20</sup> This is particularly important to remember when analysing the partial citizenship of Northern Irish women in terms of abortion access, not only after the decriminalisation of abortion in 2019, but also the conditions of abortion access prior to this.

## Abortion politics in Northern Ireland

Abortion rights in Northern Ireland reflect the complexities of politics in Northern Ireland. The 1967 Abortion Act which legalised abortion in the United Kingdom, did not extend to Northern Ireland. When the 1967 Abortion Act was introduced, the Parliament of Northern Ireland at Stormont was still making its own laws. The Northern Irish Parliament members- at the time, dominated by the Ulster Unionist party – did not even address abortion in Northern Ireland at the time. The Northern Ireland Assembly was established as part of the Belfast/Good Friday Agreement in 1998, and the Northern Ireland Executive committee runs the devolved government in Northern Ireland on behalf of the assembly – which includes the Department of Health. Religion runs deep in Northern Irish history. It is the most religious part of the UK, which is reflected in its politics, with parties such as the DUP being openly anti-abortion.

Abortion policy in Northern Ireland was transferred to the Northern Ireland Assembly in 2010 as part of the Hillsborough Castle Agreement. Despite this devolution of power, Westminster retained the authority to legislate in all regions of the UK. It was through this legislative power that abortion was eventually decriminalized in Northern Ireland by the UK Parliament in 2019. However, as Horgan and O'Connor highlight, 'it is alleged that to encourage the political parties into a power-sharing coalition, the British government agreed not to extend the 1967 Abortion Act for an unspecified length of time'.<sup>21</sup> This allegation is notable in light of the fact that the power to legislate on abortion was devolved to the Northern Ireland Assembly in 2010, coinciding with the devolution of criminal justice powers. A contrasting point of reference is Scotland, where the devolution settlement of 1998 did not include the devolution of abortion legislation, despite some advocacy from

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<sup>19</sup> G. Horgan, J. O'Connor, *Abortion...*, *op. cit.*

<sup>20</sup> *Ibidem.*

<sup>21</sup> *Ibidem.*

SNP and Conservative MPs in favour of such a devolution.<sup>22</sup> Critics have pointed out the irony in the British government's stance. While the UK publicly advocates for abortion laws as a basic human right in other countries, this 'contrasts greatly with its refusal to intervene to ensure such rights for its own citizens living in a devolved region of the UK'.<sup>23</sup>

## Abortion access in the face of Brexit and the pandemic

Prior to the decriminalization of abortion in 2019, Northern Irish citizens with unwanted pregnancies often faced the necessity of traveling to other parts of the UK to access abortion services, a journey that would have entailed personal expenses for travel and accommodation. Unfortunately, this practice endures for some women even today, primarily due to the persisting scarcity of comprehensive abortion services and resources within Northern Ireland. While substantial progress was made in 2019 with abortions becoming legal and funded on the NHS in Northern Ireland, the full implementation of comprehensive and accessible services continues to face challenges. The availability of healthcare facilities with the capacity to provide abortion services remains an issue. This lack of infrastructure may necessitate travel to a different region or even to the mainland UK for some individuals to access the NHS abortion service, resulting in added financial and logistical burdens. As Yuval-Davis states 'sexual and reproductive (or any other) rights, understood as private 'liberties' or 'choices' are meaningless, especially for the poorest and most disenfranchised, without enabling conditions through which they can be realized'.<sup>24</sup> Due to 'ongoing political deadlock and ideological resistance', Northern Ireland's power-sharing executive at Stormont has failed to fully commission services which were legislated for in the decriminalisation law.<sup>25</sup>

The all-encompassing attention given to Brexit and the ensuing political intricacies it imposed on Northern Ireland not only marginalized but also significantly hindered the advancement of reproductive rights for Northern Irish women, diverting critical resources, political attention, and advocacy efforts from addressing this pivotal issue. Brexit introduced a complex dimension for Northern Ireland, particularly with the creation of the Northern Ireland Protocol. This new framework aimed to address issues related to the border with the Republic of Ireland, but it also had implications for various aspects of governance, including healthcare. These complications further diverted the focus of the Northern Ireland Assembly and policymakers away from addressing reproductive rights. Furthermore, 'the extraordinary circumstances brought about by the spread of Covid-19 have further compromised the prospects for reproductive rights and abortion healthcare availability'.<sup>26</sup> Women in Northern Ireland requiring abortion services continued to en-

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<sup>22</sup> *Ibidem.*

<sup>23</sup> *Ibidem.*

<sup>24</sup> N. Yuval-Davis, *Gender & Nation*, *op. cit.*

<sup>25</sup> M.A. Deiana, J. Hagen, D. Roberts, *Nevertheless, they persisted. Feminist activism and the politics of crisis in Northern Ireland*, "Journal of Gender Studies" 2022, Vol. 31, No. 5, pp. 654–667.

<sup>26</sup> *Ibidem.*

counter the necessity of traveling to the UK to access safe and cost-free abortions during the pandemic, a task further complicated by the imposition of travel restrictions amidst lockdown measures. As quoted by Deiana et al. ‘with flights cancelled due to the pandemic, the only option for those in need of abortion became an eight-hour freight ferry. Clinics were under pressure due to staff illness and redeployment, and the supply of decriminalised abortion pills was disrupted for both manufacturing and postal reasons caused by the pandemic’.<sup>27</sup> It is concluded that ‘the challenges brought about by the pandemic are deeply intertwined with the complex political and institutional scenario of post-Belfast/ Good Friday Agreement [Northern Ireland] in ways that, yet again, compromise the gains achieved through both strategic engagement and creative grassroots activism’.<sup>28</sup>

Northern Ireland is still waiting for fully commissioned and accessible abortion services despite historic reform which decriminalised abortion. On 24<sup>th</sup> October 2022, the UK government announced that it will override the Northern Ireland executive and directly instruct the nation’s health trusts to provide abortion services.<sup>29</sup> This formal commissioning will hopefully help women in Northern Ireland access safe, legal, and free abortion services across Northern Ireland and will help eliminate discrimination based on geographical location and class. However, the civil and social right of women as citizens of the United Kingdom continue to be undermined today and leaves them with partial citizenship status that does not respect their bodily autonomy.

## The unique case of women’s citizenship in Northern Ireland

Yuval-Davis argues that the Marshallian notion of community in the definition of citizenship ‘evokes a strong sense of belonging and of national identity that citizenship can provide’.<sup>30</sup> Yuval-Davis compares the Andersonian notion of the nation as the imagined community and the Marshallian notion of citizenship, which ‘are being unified in a non-problematic way’.<sup>31</sup> This then leads one to question the relationship between the community and the state and how it affects people’s citizenship. Richardson highlight’s Turner’s point of view that citizenship may be defined as ‘that set of practices (juridical, political, economic, and cultural) which define a person and social groups’ and suggests that within this framework citizenship is understood in terms of national identity.<sup>32</sup> Richardson states: ‘Those who are perceived as not belonging to the city-state or the nation-state can be excluded from the rights of citizenship. They are non-citizens, denied the rights of membership of, or belonging to, a particular community with an assumed shared identity’.<sup>33</sup>

In the case of Northern Ireland, one could question the relationship between the community in Northern Ireland to the state control in Westminster. The complexities of Northern

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<sup>27</sup> *Ibidem.*

<sup>28</sup> *Ibidem.*

<sup>29</sup> Northern Ireland Office, *The Belfast Agreement, op. cit.*

<sup>30</sup> N. Yuval-Davis, *Gender & Nation, op. cit.*

<sup>31</sup> *Ibidem.*

<sup>32</sup> D. Richardson, *Citizenship and Sexuality..., op. cit.*

<sup>33</sup> *Ibidem.*



Irish politics have resulted in abortion politics in this region of the UK being disregarded by the devolved government and women's citizenship's rights have been undermined and discriminated against. The distance between the community and the state has left gaps in people's citizenship, which resulted in women not only being second class citizens, but partial citizens in a particular region of the UK. The 'assumed shared identity' of women who all have UK citizenship is undermined and leaves Northern Irish women as 'perceived as not belonging to' the nation.<sup>34</sup>

## Conclusion

Analysing citizenship from a feminist viewpoint underscores the importance of recognizing and respecting sexual and gender differences among citizens. By considering the reproductive rights of women to be civil/social rights under the Marshallian theory of citizenship allows the analysis of abortion within a civil rights framework. When we intersect the complex landscape of abortion politics with the unique political dynamics in Northern Ireland and scrutinize the citizenship status of Northern Irish women, a stark and persistent discrimination becomes evident. For too long, Northern Irish women have been denied the fundamental right to bodily autonomy and have found themselves isolated from the rest of the UK. This discrimination has only been exacerbated by the far-reaching consequences of Brexit and the ongoing challenges posed by the Covid-19 pandemic, precisely when one might have expected increased equality following the decriminalization of abortion in 2019. In theory, Northern Irish women should have equal access to safe, legal, and cost-free abortion services across the region, but, regrettably, the Northern Irish community remains underserved and overlooked. The decision by Westminster to intervene in the Northern Irish Assembly and commission abortion services is a step that should have been taken alongside the rest of the UK in 1967. In the present reality, access to abortion in Northern Ireland underscores the continued influence of patriarchal forces oppressing women, especially those from marginalized communities within the UK. The Northern Irish Assembly's prerogative to restrict women's access to abortion further marginalizes women, pushing them to the fringes of society. For those who cannot afford to travel to the mainland for an abortion or cannot access abortion services in Northern Ireland, the cycle continues, resulting in women having children they may struggle to house, feed, and care for. The state then bears the responsibility of supporting pregnant women and their children, necessitating economic aid, housing, and basic healthcare. Given these ongoing challenges and disparities, it remains imperative to revisit and reconceptualize citizenship from a feminist perspective, ensuring that the rights and autonomy of all citizens, particularly women, are upheld and protected.

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<sup>34</sup> *Ibidem.*



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