
Abortion Access in the Republic of Ireland and Northern Ireland:

International Influence and Changing Laws?

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Access to abortion services in Northern Ireland and the Republic of Ireland is extremely restricted. Women have few options beyond traveling abroad and paying out of pocket to undergo an abortion. In the United Kingdom, abortion is legal up to 24 weeks and is largely free of cost under the National Health Service. While Northern Ireland is part of the United Kingdom, laws legalizing abortion do not apply, and abortion law has not changed since 1861. In 1983, the Republic of Ireland passed an amendment to its constitution equating the life of a mother with the life of an unborn fetus. Since then, several high-profile court cases were brought to the European Court of Human Rights, which has slowly expanded abortion access in the country.

INTRODUCTION

Without the external power and pressure of the British, the Republic of Ireland and Northern Ireland would most likely be a united country today. After multiple armed conflicts throughout the centuries, the English officially established control over the island of Ireland in 1603 under Queen Elizabeth I. To establish and entrench British power over the country, Protestant settlers were moved to Ireland starting in the 17th century and established as landed elite in the Catholic country. In 1916, Irish Catholics rebelled against foreign control, setting in motion an eventual agreement with Great Britain that granted Ireland Home Rule. However, this agreement divided the country, leaving six counties in Northern Ireland where there was a large Protestant population, under British rule (Beckett 1966, 1).

The division of the country was not something the Irish Catholics leading the rebellion wanted, but it was a sacrifice made to achieve Home Rule for the rest of the country. However, this division did not happen peacefully, and led to a civil war in the Republic of Ireland and was a catalyst for “The Troubles” of the 1970’s and 1980’s in Northern Ireland. It was not until 1998, with the Good Friday Agreement, that a tenuous peace was established between the two countries (Good Friday Agreement 1998).

To an outsider, the division between the Protestants and Catholics can be hard to grasp. However, religion is deeply embedded in the identities of both Northern Ireland and the Republic of Ireland, and even more entrenched in Northern Ireland since religion has long been the key, and arguably only, feature of division. Religion has long played a

role in justifying a restriction on abortion access for women across the globe and has certainly played a role in supporting laws limiting abortion in both Northern Ireland and the Republic of Ireland. The Emerald Isle, as Ireland is often referred to, is a divided island. Because the Emerald Isle is operating under different laws, defined and separated by religion and rooted in tradition, it presents a case to explore about access to abortion for Irish and Northern Irish women.

The research presented here explores the similarities and differences in abortion access in Northern Ireland and the Republic of Ireland, looking specifically at the legislation in each country, the experiences of women accessing abortion, and international pressure to expand abortion services. While this research does not address abortion access in the rest of the United Kingdom, it examines the laws in the UK regulating abortion access and explores why they do not apply to Northern Ireland. Furthermore, it discusses the UK’s advocacy for abortion access in the developing world and absence of advocacy in Northern Ireland. Looking specifically at the influence and lack of influence of international pressure to expand abortion access, the research presented suggests that while there are many similarities between the two countries, the unique position of Northern Ireland as part of the UK, as well as a hardening of religious identity, has protected it from influence to change its abortion policy. The following sections explore the current research surrounding abortion legislation and access in both countries, and international and European Union influence on abortion rights in the Republic of Ireland and Northern Ireland.

CURRENT ABORTION ACCESS RESEARCH ABOUT THE REPUBLIC OF IRELAND AND NORTHERN IRELAND

Abortion rights, or lack thereof, are widely discussed in the Republic of Ireland and Northern Ireland, due to their unique position as Western European countries with extremely restricted access to abortion services. The body of research that exists about abortion access in these two countries mostly focuses on the laws in place, as well as legal challenges to the restrictive laws. Fiona Bloomer and Eileen Fegan (2013) focus on the ambiguous nature of legal abortion access in Northern Ireland in their paper *Critiquing recent abortion law and policy in Northern Ireland*. Other researchers examine maternal and public health implications of such restrictive laws. For example, Ronit Lentin (2013, 133) analyzes the death of Savita Halappanavar, a dentist who was denied a lifesaving abortion and died in a hospital in Galway in 2012. Byron Calhoun et al. (2013) examine public health outcomes related to access to abortion in Great Britain and Northern Ireland. While the literature on abortion in Ireland and Northern Ireland examines legislation, court cases, and political and cultural attitudes, as well as public health implications of abortion access in each country, most do not examine why there are differences in access to abortion between the two countries and how those differences developed. This paper focuses on and analyzes differences in access between Ireland and Northern Ireland.

LEGISLATING ABORTION ACCESS IN IRELAND AND NORTHERN IRELAND

Abortion was made legal in England, Scotland, and Wales under the Abortion Act of 1967 (Abortion Act 1967). Originally, the law allowed for abortions to be performed up to 28 weeks into a pregnancy. As medical technology improved, babies could live outside of the womb at 28 weeks. In response to demands for change, the Human Fertilization and Embryology Act of 1990 amended the law and restricted abortions to 24 weeks (Ainsworth 2008). However, according to Steven Ainsworth (2008) in his article "Abortion: The debate continues," "the 28-week limit, however, was never an absolute limit according to the original Act, nor 24 weeks an absolute limit according to the Act of 1990." Therefore, in cases where an abortion needs to be performed after the prescribed limit, to save the mother's life for instance, it is still legal to do so in England, Scotland and Wales (Ainsworth 2008).

While abortion is legal in the UK, there are still requirements that must be met under the National Health Service (NHS 2016). The NHS (National Health Service), which is publicly funded, provides abortion services only at NHS hospitals or clinics, typically available at no cost to the patient (NHS 2016). Before the procedure, a patient must attend an assessment appointment to go over the risks involved, and to sign a consent form confirming the date of the abortion (NHS 2016). Usually, a patient is also given a choice between a medical abortion, which is a pill a patient takes twice, and a surgical abortion, which is minor surgical procedure (NHS 2016). Two weeks usually pass between the initial

assessment appointment and the abortion procedure (NHS 2016).

However, none of these requirements apply to Northern Ireland, despite being part of the United Kingdom. The Abortion Act of 1967 was passed in response to the ambiguous nature of a common-law exception, which was derived from judicial precedent rather than statutory law, to the Offenses Against the Person Act of 1861, which criminalized women who had abortions and the doctors who helped them (Bloomer and Fegan 2013, 110). The common-law exception established that a doctor who in “good faith,” meaning the doctor is not deceptive in forming this opinion, performed an abortion because the pregnancy “creates a grave risk that the woman will become a mental or physical wreck” would not be criminalized (R v. Bourne 1939). When the Abortion Act of 1967 was passed, Northern Ireland had their own separate government, and they decided not to implement the law, despite the public health concerns of the previous policy. Furthermore, at the time of 1967 law, the UK Members of Parliament, did not believe that doctors would perform abortions in Northern Ireland, even if they made them legal, and, therefore, did not push to have the law expanded into that region (Dobson 2016).

While it is technically legal to perform an abortion when the mother’s life is at risk, in practice that is not what is happening. In 1972, when the UK resumed Direct Rule over Northern Ireland, they did not push to extend the law to Northern Ireland because of the local political opposition to abortion (Dobson 2016). In fact, both the Catholic and Protestant Church in Northern Ireland support anti-abortion policies (Steel 2016). Given that religion

presents the main division in Northern Ireland and neighborhoods are divided by religious belief, it is rare for the Catholics and Protestants to come to policy agreements.

Northern Ireland is still governed by the Offenses Against the Person Act of 1861, with the common-law precedent that abortion is legal when the patient is a “wreck” (Bloomer and Fegan 2013, 110). This exception does not offer a lot of protection to patients or doctors. From January 2014 to December 2015, only 16 NHS abortions were performed in Northern Ireland, due to the uncertainty of the law (Dyer 2016). Doctors are concerned that they could face prison time if they do perform abortions even when the mother’s life is at risk (Dyer 2016). Bloomer and Fegan (2013) state “anecdotal evidence that even those women that might fall within the remit of the common law cannot access abortions in Northern Ireland as medical professionals do not apply the law consistently.”

Compared to Northern Ireland, the Republic of Ireland has a larger body of legislation regarding access to abortion. Like Northern Ireland, the Offenses Against the Person Act applied to Ireland and was not changed under the 1967 Abortion Act since Ireland was an independent republic at that time (Offenses Against the Person Act 1861). In 1983, pro-life coalitions advocated for a pro-life amendment to be added to the Irish Constitution (Boddu 2011). The Eighth Amendment of the Irish Constitution stated that “the State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that

right” (Constitution of Ireland 1983). This amendment went beyond similar pro-life legislation by equating the life of the mother to the life of the unborn fetus, and ultimately limiting the legal options available to doctors even when their patient’s life was at risk.

Following a 1992 Supreme Court case, in which a 14-year old rape victim was prevented from traveling to the UK to receive abortion services, two amendments were added to the Irish Constitution that allowed for the “right to travel” (Fletcher 2000, 35) to receive an abortion and the “right to information” about services abroad (Constitution of Ireland 1983). More recently, following the death of Savita Halappanavar, a Hindu Indian immigrant who did not receive the lifesaving abortion she needed, the Republic of Ireland changed its laws (Johari 2015). After her death, the Irish legislature clarified its abortion laws by passing the Protection of Life during Pregnancy Act (PLDPA) in 2013. The new law states that abortion is legal if “there is a real and substantial risk of loss of the woman’s life from a physical illness or by way of suicide” (PLDPA 2013, 10). However, abortion in the case of rape or incest is still not legal.

DRONES AND BOATS: HOW IRISH AND NORTHERN IRISH WOMEN ACCESS ABORTION

Some abortions are legal for only some circumstances in Northern Ireland and are rarely performed as they are narrowly defined in Ireland. What this means is that women must go elsewhere to receive abortion services. According to the Irish Family Planning Association in Ireland,

between 1980 and 2015, at least 166,951 women and girls have traveled abroad from Ireland to receive an abortion. The UK Department of Health estimates that over nine women and girls a day traveled to the UK from Ireland to access abortion, adding up to 3,451 women and girls in 2015 (Irish Family 2016a).

The journey that thousands of Irish women and girls from the Republic of Ireland take every year to access abortion is often called “abortion tourism” (Oaks 2003, 1973). This reality is prevalent in Northern Ireland as well. Despite being part of the UK, Northern Irish women and girls must pay out of pocket for an abortion when they travel to other parts of the UK to receive the treatment. The lack of access to free abortions was codified in a court case in 2012, where a High Court Judge ruled “that in general the NHS should not fund services for residents of Northern Ireland which the Northern Irish assembly has deliberately decided not to legislate to provide” (Dyer 2014). This means women from both Northern Ireland and Ireland have to pay between 400 and 2000 pounds to travel to the UK and pay for the abortion procedure (Dyer 2014). This cost is prohibitive for poor Irish and Northern Irish women.

Some women, who cannot afford to travel or who are unable to travel, have tried to access abortion services in innovative ways. In 2001, Women on the Waves, a Dutch non-profit, attempted to provide abortions on a boat outside of Ireland’s jurisdictional waters. While Women on the Waves was ultimately unsuccessful in providing abortion services, by the time the boat had reached Ireland from the Netherlands, they had received 80 calls from women requesting services. After a

few additional days, 300 women contacted the ship. The women and girls who contacted them included “women who had been raped, schoolgirls who could not find a feasible excuse to go to England for a couple of days, mothers who could not pay for childcare...and political refugees who did not have the papers to travel” (Women 2001). While ultimately unable to provide abortion services, the demand for services from Women on the Waves illustrated that Irish women could not easily travel to the UK to procure an abortion.

In 2016, to protest restrictive laws in both Ireland and Northern Ireland, women in the Irish Republic flew drones to deliver abortion pills to women in Northern Ireland (The Guardian 2016). Organized by a coalition of pro-abortion groups, women in Belfast not only participated in the protest, but also took the abortion pills. However, if prosecuted under the 1861 law, the women’s actions could lead to a life sentence in prison. In the Republic of Ireland, a woman could serve 14 years behind bars for the same act (The Guardian 2016). While the drone delivery was a political stunt, women in Northern Ireland do attempt to buy abortion pills over the Internet to induce abortions. In April 2016, a young woman pled guilty to buying abortion pills over the Internet and received a suspended prison sentence. A spokesperson for the British Pregnancy Advisory Service stated, “We call on all politicians to repeal these antiquated, Victorian laws and create an abortion framework fit for women in 2016” (McDonald 2016).

While women, in both Northern Ireland and Ireland, go to great lengths to have an abortion, the laws still have not changed, despite public support for

wider abortion access. According to the Irish Family Planning Association, in “July 2016, an Irish Times/Ipsos MRBI poll found that 67 percent of respondents support a repeal of the Eighth Amendment to allow abortion in cases of rape for fatal fetal anomaly” (2016b). Furthermore, in March 2016, in a poll organized by Amnesty International Ireland, 87 percent of respondents wanted abortion access expanded, and 71 percent wanted abortion to be decriminalized (Irish Family 2016b). In that same poll, only five percent of respondents felt that abortion should be banned in any instance. However, 72 percent of those respondents did not know that there was a 14-year prison sentence for an unlawful abortion (Irish Family 2016b). Slightly lower numbers of support exist for change in the abortion laws in Northern Ireland. A poll conducted for Amnesty it was found that, “69 percent of people think the law in Northern Ireland should make access to abortion available where the pregnancy is the result of rape or incest [and] 60 percent of people think the law in Northern Ireland should make access to abortion available where the fetus has a fatal abnormality” (Cromie 2016).

INTERNATIONAL AND EUROPEAN UNION INFLUENCE ON ABORTION ACCESS IN IRELAND AND NORTHERN IRELAND

Despite popular support for a change in abortion laws voiced by citizens in both countries, there is no indication that changes to the laws in the legislatures of Ireland or Northern Ireland are on the horizon. The Irish Republic has a history

of outside influence greatly impacting both pro-life and pro-choice legislation, whereas Northern Ireland does not.

In 1983, pro-life activists pushed to pass the Eighth Amendment to the Irish Constitution, which equated the life of the unborn fetus to the life of the mother. The coalition specifically cited loosening abortion laws in the US and the Supreme Court Case *Roe v. Wade*, which legalized abortion in the United States, as a reason they pushed for this explicit constitutional amendment. This amendment was “intended to protect Ireland from liberalization, and in the more than three decades since it passed, the country has been engaged in a heated argument about the amendment’s scope and legitimacy” (Richardson 2015).

The argument over abortion rights in the Republic of Ireland did not stay contained on the island. Almost 30 years later, in June 2012, anti-abortion billboards appeared all over the country as part of the largest outreach campaign ever in Ireland (Richardson 2015). While the source of funding for the boards was never revealed, abortion rights groups believed the funding came from the United States. In fact, the director of the pro-life Action League, headquartered in Chicago said, “American donors gave hundreds of thousands of dollars to anti-abortion groups in Ireland” (Richardson 2015). Activists on both sides of the debate in the United States contribute funds and resources to Ireland to support pro-life and pro-choice campaigns (Richardson 2015). Recently, a leaked strategy memo from George Soros’ Open Society Foundation revealed a plan to support pro-choice groups in Ireland “to work collectively on a campaign to repeal Ireland’s constitutional amendment

granting equal rights to an implanted embryo as the pregnant woman” (Phelan 2016). Soros’ interest in Ireland’s abortion law focuses on the potential impact the repeal could have on other Catholic countries in Europe (Phelan 2016).

Irish abortion law is also influenced by Ireland’s status as a Member state in the European Union. In 1973, Ireland joined the European Economic Community (EEC), which eventually became the European Union. Since then, Ireland has strongly supported the EU because it has achieved greater independence from the UK, and received economic aid from the EU (Mercurio 2003, 149). By joining the EEC, Ireland also agreed to comply with the European Convention on Human Rights, and, therefore, the European Commission and the European Court of Human Rights (ECHR), which covers various political and civil rights, and whose decisions are legally binding (151). While the ECHR does not have an explicit abortion policy, it has heard individual cases on a Member State’s abortion policy.

A string of court cases referred to the European Commission on Human Rights shaped and shifted Ireland’s abortion policy throughout the 1980s and 1990s. In 1985, in *SPUC v. Open Door*, the Society for the Protection of Unborn Children (SPUC) alleged that two women’s health clinics violated Ireland’s Eighth Amendment stating that the clinics provided women with information about how to travel to Britain to receive an abortion (Mercurio 2003, 156). After a High Court and Supreme Court decision sided with SPUC, the two women’s health clinics appealed the case to the European Commission on Human Rights, claiming that the ruling violated multiple provisions, including

Article 10, freedom of expression (155). The Commission decided it did violate Article 10, a decision upheld by the ECHR in 1992 (155). Therefore, in Ireland, it was legal to counsel and provide women with information about how to travel abroad to receive an abortion.

In *SPUC v. Grogan*, the SPUC sued three student organizations that advertised information about how to travel to Britain to obtain an abortion. The students argued that what they were doing was “protected under articles 59 and 60 (now articles 49 and 50) of the EEC Treaty, which guarantee the right to travel between Member States [...] to receive services” (Mercurio 2003, 157). The High Court of Ireland referred the case to the European Court of Justice (ECJ). The ECJ ruled that abortion was a “service” and information about it could not be restricted.

Following the *SPUC v. Grogan* case, Irish politicians negotiated a specific carve out in the Maastricht Treaty protecting Ireland’s Eighth Amendment (Mercurio 2003, 153). When the Maastricht Treaty established the European Union, there were provisions to coordinate justice and home affairs, in addition to establishing a single currency (BBC 2016). Irish officials wanted to ensure that the Eighth Amendment would remain law in Ireland and not be undermined by aspects of the Maastricht Treaty. However, while the country was voting to approve the Maastricht Treaty, a much publicized abortion case entitled the X Case was litigated in the Irish Republic’s courts.

The X Case involved a 14-year-old victim of rape who tried to travel to Britain to obtain an abortion. The letter X was used in this case to protect the young girl’s identity. The case resulted in the change in

Irish law to ensure the right to abortion if suicide is a risk but did not protect the right to travel abroad (Mercurio 2003, 160). The X Case put the abortion debate at the forefront in the Republic of Ireland while the country was considering signing onto the Maastricht Treaty, with the controversial abortion protection. To ensure the Maastricht Treaty was ratified, the Irish government held a three-part referendum on the Constitution that added two amendments to protect the freedom to travel and the freedom to information about abortion (Mercurio 2003, 160).

Even after the addition of two amendments to the Constitution, Irish women continued to litigate abortion access in the European courts. In 2005, three women brought a case to the ECHR about Ireland’s abortion laws in *A, B, and C v. Ireland*. All three women received abortions in Britain and had complications from the procedure when they returned to the Republic of Ireland. They argued that Irish laws violated Article 8, which protects one’s private and family life (Staunton 2011, 213). The ECHR ruled that in the situation for woman C, her rights were compromised due to the uncertainty of Ireland’s law when the mother’s life is at risk. The ECHR required Ireland to introduce clear guidelines outlining legally when an abortion could be performed (Staunton 2011, 213).

Uncertainty in Irish abortion law continued to cause problems for Irish women in the Republic, to deadly consequences. In 2012, Dr. Savita Halappanavar died in a hospital in Galway when she was denied a life-saving abortion. Dr. Halappanavar was told that she could not have an abortion “because Ireland is a Catholic country” (Waterfield 2013).

Despite her worsening condition, doctors waited until the fetal heartbeat stopped or she had a miscarriage to perform an abortion (Waterfield 2013). Investigations into her death concluded that her doctors felt that they could not perform an abortion under Irish law. This case put the spotlight on Ireland once again and put Ireland's abortion laws under harsh scrutiny. Following Dr. Halappanavar's death, and to comply with the decision in *A, B, and C v. Ireland*, the Irish Legislature changed its abortion law and passed the PLDPA (Protection of Life During Pregnancy Act) in 2013, allowing women to legally terminate their pregnancies if their lives are at risk (PLDPA 2013).

Ireland continues to face further international pressure and scrutiny because of its abortion laws. In 2015, Amnesty International published a report that examines the PLDPA, and harshly criticizes the law for once again not clarifying when a woman can receive an abortion and for creating harsh limitations to limit access to abortion. In June 2016, the United Nations (UN) released a report which investigated the case of Amanda Mellet, who travelled to the UK to receive an abortion when she found out the fetus would die shortly after she gave birth (RTE News 2016a). The UN found that Ireland's abortion laws subjected Ms. Mellet to discrimination and financial hardship and ordered the government to compensate her (RTE News 2016a). Following the release of the report, Mary Lou McDonald, the deputy leader of Sinn Féin, an Irish political party historically associated with Irish Catholics and the Irish Republican Army (IRA), called for a referendum on the Eighth Amendment. In response, the head of the Irish government, Taoiseach Enda

Kenny said that the Citizens' Assembly would look at the issue (RTE News 2016b).

Northern Ireland's abortion laws have essentially remained the same since 1861 with the common-law exception allowing for an abortion to be performed if the woman is an "emotional or physical wreck" (Bloomer and Fegan 2013, 110). However, the ambiguity in this exception means that abortions are rarely performed in Northern Ireland. Unlike the Republic of Ireland, its laws on abortion have not been shaped or shifted by international influence. Northern Ireland's laws are not influenced by legal abortion legislation in the rest of the UK either. The UK advocates for safe abortions abroad through the Department for International Development. In 2014, the Department stated that "a central aim of the UK Government's policy is to empower and enable women and adolescent girls to have sexual and reproductive choices." This policy, though, does not apply to women in Northern Ireland.

A main tenet of the 1998 Good Friday Agreement between Northern Ireland (UK) and Ireland, the peace agreement ending the violence between the two countries, was built upon protection of human rights in Northern Ireland (Good Friday Agreement 1998). The agreement states that the British Government would "complete incorporation into Northern Ireland Law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of Convention, including power of the courts to overrule Assembly legislation on grounds of inconsistency" (Good Friday Agreement 1998). The peace accords also established the Northern Ireland Human Rights Commission.

In 2014, the Northern Ireland Human

Rights Commission initiated a review of Northern Ireland's abortion laws, stating that by not allowing an abortion in the case of a serious malformation of the fetus, rape, or incest, Northern Ireland breaches the human rights law (Northern Ireland 2014). In November 2015, the High Court of Northern Ireland agreed and found that current abortion law was incompatible with the convention, and in December, they issued a Declaration of Incompatibility under the Human Rights Act (Northern Ireland 2014). New guidance was released in March 2016, but the law was not changed and it still does not allow for an abortion in the case of rape, incest, or serious malformation of the fetus. The Northern Ireland Justice Minister and Attorney General launched appeals in response to the decision of the High Court and they were heard by the Court of Appeal on June 20, 2016 (Dobson 2016). If the Court finds that Northern Irish abortion law is in violation of Article 8, not only would Northern Ireland have to change its law to allow abortion in the instance of fetal anomaly, rape, or incest, it would also impact the Republic of Ireland and other ECHR signatories (Dobson 2016).

CONCLUSION

The Republic of Ireland and Northern Ireland share complicated histories that have contributed to nuanced differences in abortion legislation between the two countries. While both countries were originally governed by the same legislation, the Offenses Against the Person Act of 1861, Northern Ireland's laws have remained largely the same. The Republic of Ireland's laws have been shaped by international pressure and its membership

in the European Union.

However, international pressure and the European Union have not had the same influence on abortion policy in Northern Ireland. Due to Northern Ireland's delicate membership in the United Kingdom, and the staunch religious identity of both Protestant and the Catholics, Northern Ireland is not governed by the abortion laws that apply to the rest of the UK. Furthermore, it was not until 1998, that the European Commission on Human Rights was fully applied in Northern Ireland. Abortion laws in Northern Ireland have remained largely unchanged over the last 156 years, in part due to religious identity, and to a legal framework that prevented a liberalization of abortion laws.

The Republic of Ireland's abortion laws have fluctuated and have been influenced by foreign forces, including the European Union. Increased fears from expanded abortion rights abroad directly lead to the passage of the Eighth Amendment to Ireland's Constitution, which prohibited abortion. Since the passage of the law, abortion rights for Irish women have been largely shaped by court cases heard by the ECHR that often directly challenge the Eighth Amendment. At the order of ECHR in 2013, Ireland passed legislation clarifying its abortion law as pertaining to the life of the mother. Depending on the outcome of the Northern Ireland Human Rights Commission case, Northern Irish law may soon be shaped by the ECHR for the first time and Ireland's laws will once again likely be affected by international pressures.

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ACKNOWLEDGEMENTS

The author would like to thank the whole Policy Perspectives team, especially Janette Martinez and Matt Dotzler, and Dr. Kathryn Newcomer, for their thoughtful feedback and guidance. She would also like to thank Dr. Mita Marra for encouraging her interest in this comparative analysis. Lastly, the author would like to thank her wonderful boyfriend, Maurice Urbain for his continued love and support through the editing process and her academic endeavors.