

**Assisted Decision Making (Capacity) Act 2015  
as a conduit for realising  
human rights in mental health**

*Brendan Kelly*



The twelve-month  
project of a self-  
confessed 'Zen  
failure'

The  
Doctor Who  
Sat for a Year  
Brendan Kelly



GILL

audible 



# HOW BIG IS IT?

**A Big Book All  
About Bigness**

by **Ben Hillman**

 SCHOLASTIC

**1. Numbers**

**2. Capacity**

**3. MHA 2001**

**4. Conclusions**



# HOW BIG IS IT?

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 **SCHOLASTIC**



**Travelling community  
Children**

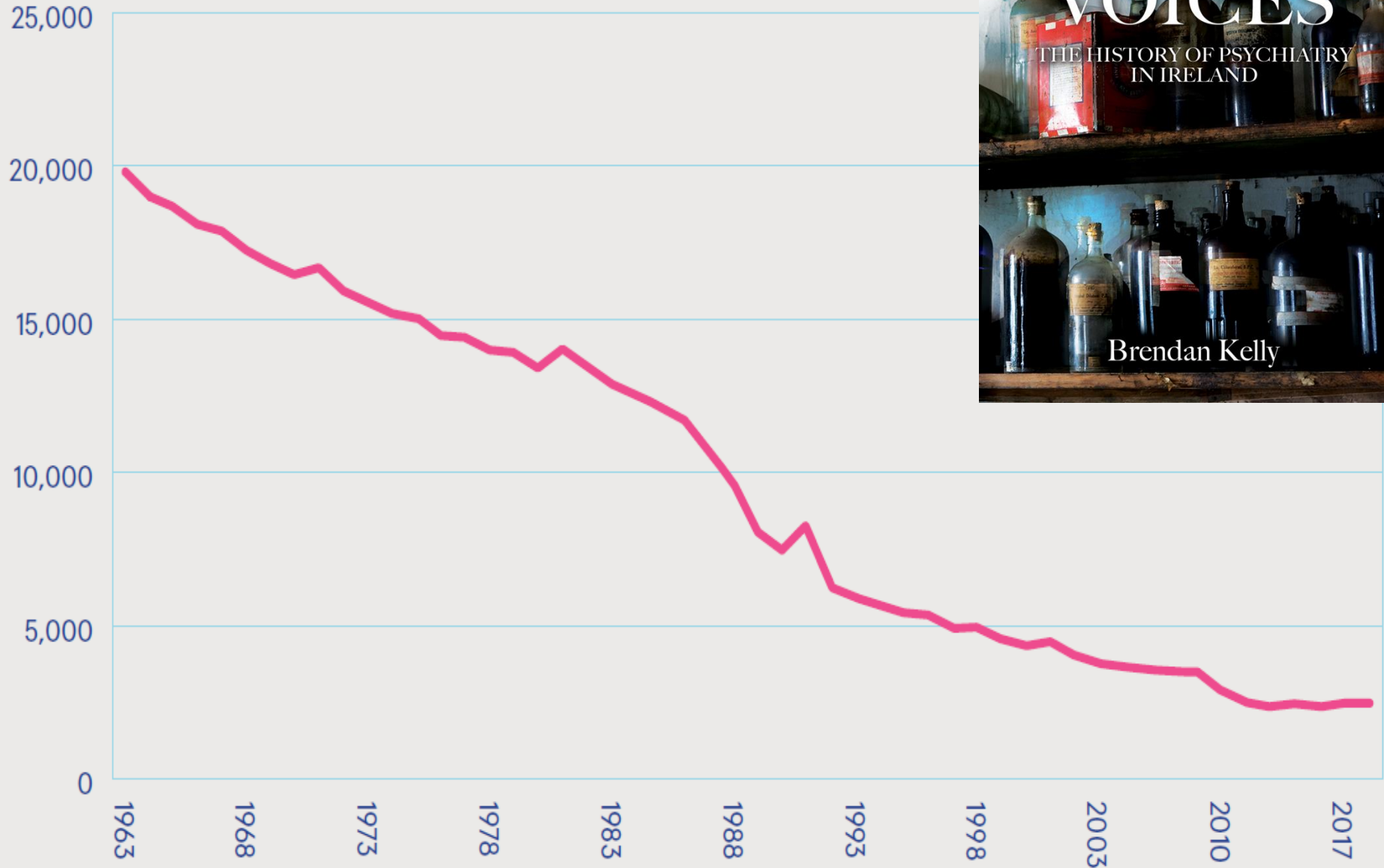
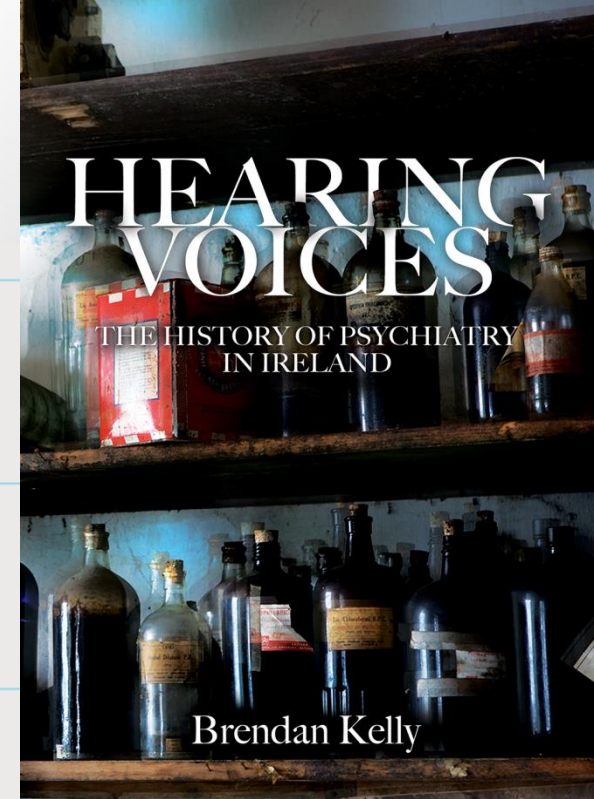
**Globally, suicide  
has fallen by a  
third since 1990**



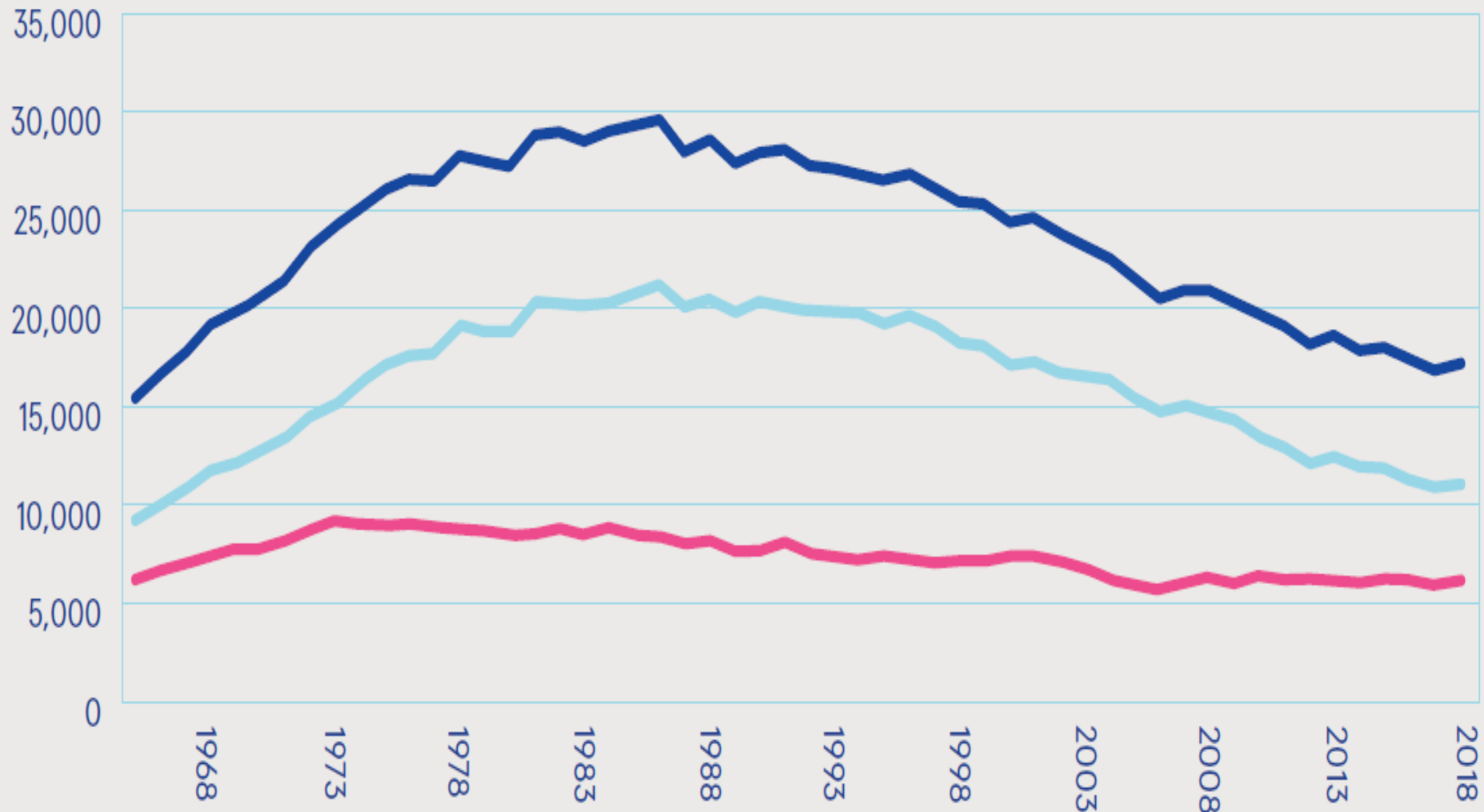
KEY

ALL

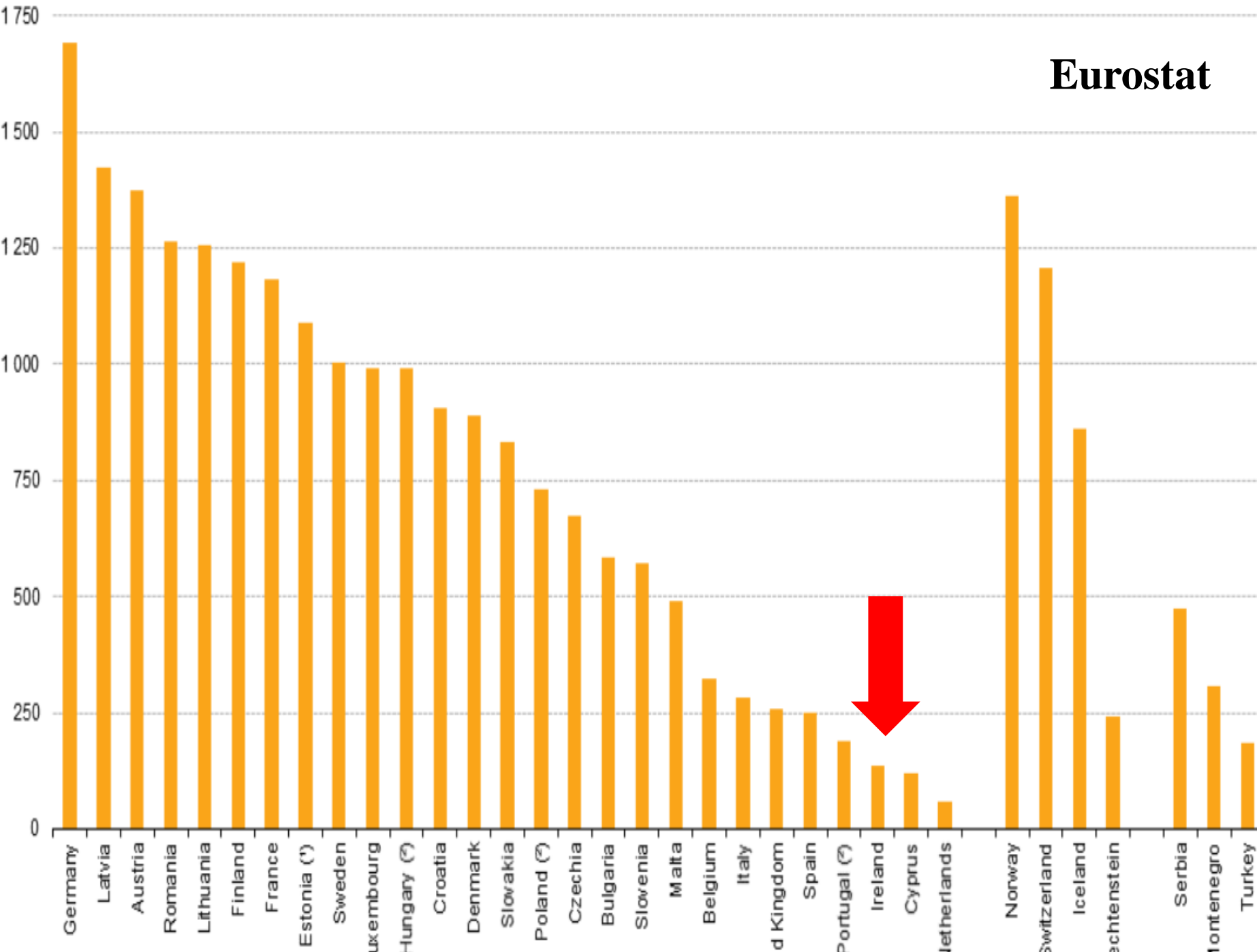
FEMALE



First admissions    All admissions    Re-admissions







## *Other indices*

**Murder suicide**

**< 2 per year**

**(one fifth of US rate)**

**Involuntary admissions**

**47/100,000 per year**

**(half of English rate)**

**Anti-depressant use**

**RRR**

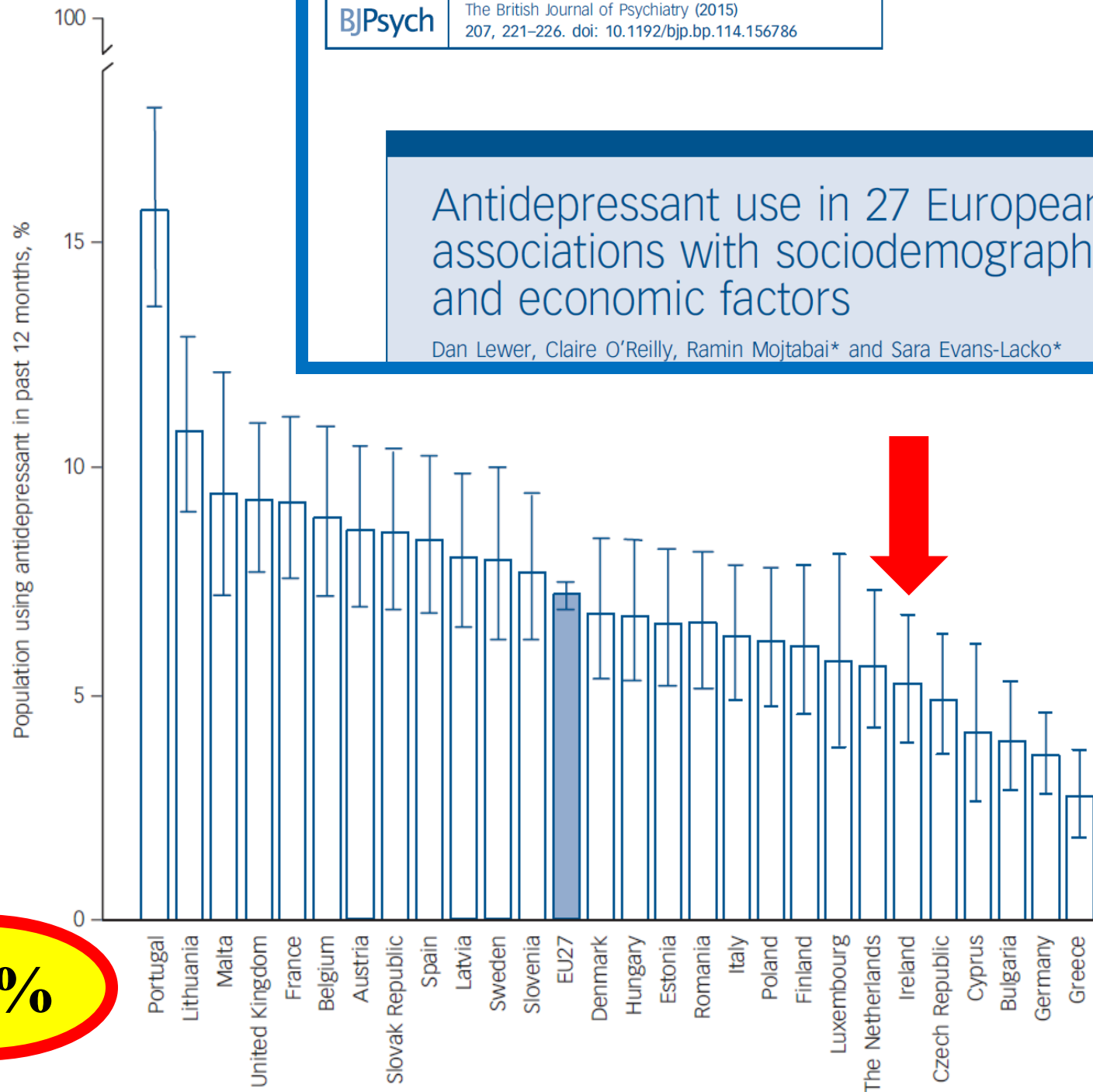
**Anti-depressant: 58%**

**Aspirin: 19%**



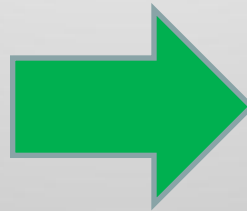
# Antidepressant use in 27 European countries: associations with sociodemographic, cultural and economic factors

Dan Lewer, Claire O'Reilly, Ramin Mojtabai\* and Sara Evans-Lacko\*



7.2%

**Crisis  
narrative**



**Problem-  
solving  
narrative**

**1. Numbers**

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**“Capacity”  
vs  
“Disability”**

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*Number 64 of 2015*

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**Assisted Decision-Making (Capacity) Act 2015**

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- **Presumption of capacity**
- **Functional assessment**
  - *Understand*
  - *Retain*
  - *Use or weigh up*
  - *Communicate*
- **Insight**
- **Cognition and executive function**



**No Circuit Court**

1. **Decision-making assistant**

2. **Co-decision-maker**

3. **Decision-making representative**

**Circuit Court**

*How much decision-making authority is given away?*

No Circuit Court

1. **Decision-making assistant** 0%

2. **Co-decision-maker** ? 50%

3. **Decision-making representative**

100%

Circuit Court



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**2018**

**17,000 psychiatry admissions**

**650,900 medical admissions**

**27,000 people in nursing homes**

**Medical and  
surgical  
inpatients**

**Full mental capacity**

**Partial mental capacity**

**Lack mental capacity**

ORIGINAL PAPER

**Who can decide? Prevalence of mental incapacity for treatment decisions in medical and surgical hospital inpatients in Ireland**

R. Murphy<sup>1</sup>, S. Fleming<sup>2</sup>, A. Curley<sup>1,3</sup>, R.M. Duffy<sup>1,4</sup> and B.D. Kelly<sup>1</sup>

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**Medical and  
surgical  
inpatients  
(n=300)**

*Ruth Murphy*

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# Medical and surgical inpatients (n=300)

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**71%**

**Partial mental capacity**

**Lack mental capacity**

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**Medical and  
surgical  
inpatients  
(n=300)**

*Ruth Murphy*

**Psychiatry  
inpatients  
(n=215)**

*Aoife Curley*

**Full mental capacity**

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**Medical and surgical inpatients (n=300)**

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**Psychiatry inpatients (n=215)**

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**Psychiatry inpatients (n=215)**

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**28%**

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**Medical and surgical inpatients (n=300)**

*Ruth Murphy*

**Psychiatry inpatients (n=215)**

*Aoife Curley*

**Full mental capacity**

71%

47%

**Partial mental capacity**

2%

51%

**Lack mental capacity**

28%

2%

*older, unmarried, not working outside home, more diagnoses*

*involuntary, non-Irish, unemployed, older*



Contents lists available at ScienceDirect

International Journal of Law and Psychiatry

journal homepage: [www.elsevier.com/locate/ijlawpsy](http://www.elsevier.com/locate/ijlawpsy)



Categorical mental capacity for treatment decisions among psychiatry inpatients in Ireland



Aoife Curley<sup>a,\*</sup>, Ruth Murphy<sup>a</sup>, Róisín Plunkett<sup>b</sup>, Brendan D. Kelly<sup>a</sup>

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	<b>Voluntary</b> <i>n=176</i>	<b>Involuntary</b> <i>n=39</i>
<b>Full mental capacity</b>	<b>58%</b>	
<b>Partial mental capacity</b>	<b>40%</b>	
<b>Lack mental capacity</b>	<b>2%</b>	



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<b>Full mental capacity</b>	<b>58%</b>	<b>0%</b>
<b>Partial mental capacity</b>	<b>40%</b>	<b>100%</b>
<b>Lack mental capacity</b>	<b>2%</b>	<b>0%</b>

**1. Numbers**

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REPORT OF THE EXPERT GROUP  
ON THE REVIEW OF THE  
MENTAL HEALTH ACT 2001

Tús Áite do  
Shábháilteacht **1** Othar  
Patient Safety **1** First



- **Advance healthcare directives**
- **Definition of voluntary patient**
- **“In good faith and for the benefit of”**
- **Diagnosis** *What diagnosis?*
- **Unwise decisions**
- **Recovery**

*There are no insurmountable problems  
with the interaction between the two Acts*

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**Arrangement-focussed  
view of justice**

**Realization-focussed  
view of justice**

**They said the  
MHA 2001  
could not be  
implemented...**

WINNER OF THE NOBEL PRIZE  
IN ECONOMICS

# *The Idea of Justice*

AMARTYA SEN

'ONE OF THE MOST INFLUENTIAL PUBLIC  
THINKERS OF OUR TIME' OBSERVER



**The pessimist suffers twice**







**“Medicine is a social science, and politics nothing but medicine at a larger scale”**

**Rudolf Virchow  
(1821-1902)**

# Dignity, Mental Health and Human Rights

Coercion and the Law

BRENDAN D. KELLY



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## Mental Illness, Human Rights and the Law

Brendan D. Kelly

