

COUNTRY REPORT

IRELAND



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Introduction¹

In recent years, deliberative mini-publics (in the form of citizens' assemblies and conventions) have become a common feature of Ireland's constitutional landscape.

In this report we explore Ireland's legal framework of Constitution making and constitution making dynamics, constitution making and deliberative democracy, and recent deliberative democratic innovations in constitution making. We conclude with a discussion of the challenges faced and potential future developments.

Legal Framework of Constitution-Making & Constitution Making Dynamics

Bunreacht na hÉireann (the Irish Constitution) is a well-entrenched constitution. Article 47 provides that amendment is only possible by way of referendum. The amendment process is initiated by politicians, with little or no say for the citizenry in deciding the referendum topic. Indeed, only the Government has the power to propose formal constitutional change, though endorsement by a majority of the people is necessary to approve this. The people function as a kind of veto in this process. According to Article 46, every proposal to amend the Constitution must be initiated in Dáil Éireann (lower House of Parliament) as a Bill. It must then be passed by both Houses of the Oireachtas (Parliament) before being submitted to the people. The Bill must be expressly for the purpose of amending the Constitution and it cannot contain any other proposal. If the proposal is approved by a simple majority of the votes cast at the referendum (there is no minimum turnout threshold), the President will sign it into law.

Article 46, specifies that any provision of the Constitution can be amended by way of variation, addition, or repeal. Apart from this, there is no further guidance as to whether there are any specific limits on the power of the people to amend the Constitution and case law would indicate that this power may be unlimited.² This, together with the association of the referendum with the concept of popular sovereignty, might create the impression that the people are at the heart of constitutional change. However, as noted above, the people have only a limited formal role in changes proposed by the Government, acting effectively as a veto over them. The people have no direct power to propose or influence potential changes until these are brought before them in the form of a proposed amendment Bill. The people are then restricted to a yes or no response. This process also means that governments will be selective in terms of the types of proposals brought forward for referendum.

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² See for example, *Finn v Attorney General* [1983] IR 154 and *Re Article 26 and the Regulation of Information (Services Outside the State for Termination of Pregnancies) Bill 1995* [1995] 1 I.R. 1.

Since its approval in 1937, the Irish Constitution has been amended 32 times (22 of these in the last 30 years). In recent years, the pace of Constitutional amendment has accelerated. More significantly, with regard to this report, the process leading to Constitutional amendment has evolved to include a role for mini-publics such as the citizens' assemblies and the Irish Convention on the Constitution (ICC) in pre-referendum deliberations and 4 of the 5 referendums since 2015 have involved this new institutional innovation. It should be noted that this revised Constitutional amendment process has not been formally institutionalized in terms of constitutional codification and these deliberative mini-publics have not been employed for all of the recent referendums, but their growing regularity suggests the potential for institutionalization (Farrell et al. 2019).³ In the past, governments have been slow to propose amendments on major social reform, particularly with regard to proposals that are likely to be controversial. However, the recent processes involving deliberative mini-publics have proved useful for enabling governments to move forward with proposals for constitutional reform since the recommendations from the assemblies act as a form of endorsement and consequently, the government is more willing to proceed if the measure is likely to receive support.

Constitution Making and Deliberative Democracy

Ireland has emerged as a world leader in deliberative democracy and has used deliberative institutions such as the Constitutional Convention (2012-2014) and the Citizens' Assemblies of (2016-2018) and (2020) as part of its Constitutional revision process (though not all of the topics discussed by these fora have actually required constitutional reform).

These deliberative democratic innovations, which emerged in the 2010s, were part of a wider Governmental response to the profound crises both in global capitalism and in Ireland's national economic and social situation that strained the relationship between Government and the people (Suiter et al. 2016a). These crises acted as a catalyst for Ireland's new approach to constitutional and political reform (Harris et al. 2013; Farrell and Suiter, 2019). The Irish cases, outlined separately in the section below, are distinguished from more traditional citizens' assemblies (such as those in British Columbia, Ontario and the Netherlands) in the sense that the agenda was more wide-ranging and the time scale for each topic more limited. Unlike the other three cases which each had a long period of time to consider just one item, the Irish Constitutional Convention (ICC) was asked to consider eight items, subsequently adding two further items to its agenda, whereas the Irish Citizens' Assembly (2018-2019) was asked to consider five items. The current Citizens' Assembly on Gender Equality, although focusing on one particular topic has been asked to consider a wide range of constitutional, political and societal issues within it.

This report begins with the 'We the Citizens' initiative (2011) that shaped both the formation and process of all the Irish assemblies that succeeded it.

³ For example, the divorce referendum 2019.

We the Citizens (WTC) – Pilot Citizens’ Assembly (2011)

The WTC pilot assembly was established by a group of Irish political scientists, and formed part of a wider sectoral response to the then political and financial crisis. Arguing that the political system was no longer fit for purpose, they advocated for a series of political reforms, of which a Government established citizens’ assembly was one.

The WTC initiative’s core objective was to help guide the new government on how to include citizens directly in a deliberative process of Constitutional reform, as outlined in the coalition parties’ manifestos and their programme for Government (for more information see Farrell & Suiter 2019). It was funded by Atlantic Philanthropies.

The WTC initiative took a two-phased approach. The first involved holding a series of public meetings around the country. These meetings helped inform the topics that were deliberated upon by the Citizens’ Assembly (phase 2).

The pilot assembly took place over the course of a weekend in June 2011. It involved a group of 100 randomly selected citizens (stratified according to gender, age, region and socio-economic status) deliberating on a range of political and economic issues such as electoral system reform, the introduction of water charges, the balance between taxation and public spending etc. Research⁴ on the process proved conclusively that participation in the Assembly had increased members’ interest in politics, had shifted their opinions on contentious economic matters. In short, it demonstrated that Irish citizens were both willing and able to deliberate!

The WTC project’s impact on Irish political life and Constitutional reform cannot be overestimated. Its research findings allayed fears, expressed by some within the wider political system, concerning the direct inclusion of citizens in such processes. As a consequence, it influenced and shaped the establishment, composition and overall deliberative processes of the subsequent Citizens’ Assemblies discussed below.

Ireland’s Constitutional Convention (2012-2014)

The two parties (Fine Gael and the Labour party) that formed the government in the wake of the 2011 general election set out specific proposals for a citizen-oriented constitutional review process. The Labour Party proposed a Constitutional Convention to draw up a new Constitution for the Ireland of the 21st century. The party proposed that 30 of its members would be drawn from the parliament, 30 would be members of civil society organisations, and 30 would be ordinary citizens. Fine Gael’s proposal was for a citizens’ assembly, to look at more limited areas of reform, composed of up to 100 members chosen from the public to reflect the demographic make-up of the country (Suiter et al, 2018).

⁴See Farrell, O’Malley, and Suiter (2013), Suiter, Farrell and O’Malley (2016) and O’Malley, Farrell and Suiter (2019)

In negotiations between these two parties to form a coalition government, they reached a compromise. The Programme for Government proposed establishing a Constitutional Convention to implement ‘a process to ensure our Constitution meets the challenges of the 21st century, by addressing a number of specific urgent issues’ (Programme for Government, 2011). Subsequently it was clarified that the Convention would consist of 66 citizens, 33 politicians, and an independent chair. The citizen members were selected at random by an independent market research company that used a sampling procedure, stratified across gender, age, socio-economic status, and geography.⁵ Target quotas were established using the Central Statistics’ Office’s (CSO) population estimates. All core targets were achieved.

The political parties determined how their parliamentary members were selected. All major political parties on the island of Ireland as well as a grouping of Independent representatives were invited to send members to the Convention. The parties’ allocations were proportionate to their representation in parliament. The decision that politicians would be included as members of the Convention was an important development and had a significant impact on political parties’ acceptance (and championing) of this type of deliberative democratic innovation. To allow for the possibility of members not being available for all meetings, a list of substitute members was compiled.

The Convention was tasked with considering eight specific issues: reduction of the Presidential term of office to five years; reduction of the voting age to 17; review of the Dáil electoral system; Irish citizens’ right to vote at Irish embassies in Presidential elections; provisions for marriage equality; amendment to the existing clause in the Irish Constitution on the role of women in the home and encouraging greater participation of women in public life; increasing the participation of women in politics; and removal of the offence of blasphemy from the Constitution. The parliamentary resolution that established the Convention also allowed it to propose other relevant constitutional amendments after the original eight reports were completed, thereby giving the Convention some limited agenda setting powers to add two additional topics: parliamentary reform and economic, social and cultural rights.

Informed by the Canadian citizen assemblies of the early 2000s (Fournier et al., 2011) and influenced by research flowing from the We The Citizens initiative a year earlier (Farrell et al., 2013), the Convention operated along deliberative lines that included: mixing open plenary sessions with private roundtable discussions; arranging members in mixed (politician and lay member) groups at tables of eight; and using trained facilitators and note-takers to ensure that members had an opportunity to speak, arguments were noted, discussions stayed on topic, and members were respectful of each other’s opinions.

Public submissions, academic ‘expert’ presentations, stakeholder panels, and personal testimonies informed the Convention’s deliberations. In the case of invited

⁵ For more information see <http://www.constitutionalconvention.ie/Documents/BehaviourAndAttitudes.pdf>

speakers, care was taken to ensure a wide range of opinions, perspectives, experiences, and political views were presented.

Members’ feedback was sought each weekend in an attempt to ensure the process was reflective and responsive to members’ needs. Oversight was also provided by the Convention’s steering group which consisted of the Chairperson and representatives from the political parties and public members selected by the Convention. It was charged with assisting the Secretariat with core planning and operational issues namely overseeing the work programme for each weekend and the list of possible speakers.

The Convention made its decisions by a majority of the votes of members present and voting (with a casting vote for the Chairperson when required). At the Convention’s first weekend, it was agreed that all votes would be conducted by secret ballot. This removed pressure from political members to abide by the party whip. Additionally, members developed the ballot paper for each weekend and two representatives (one politician member, one lay member) oversaw the counting of the votes.

As per the Parliamentary resolution that established it, the Convention’s reports were forwarded to the Houses of the Oireachtas for further discussion and the government committed to respond within four months. The first three reports were all discussed in a timely fashion. This was not the case for those that followed. In all, the Convention made 38 recommendations of which it is estimated that 18 would require a referendum. The majority of the Constitutional Convention’s recommendations have been accepted and/or are due to be implemented. Only 8 of them were rejected. Many of those accepted are still awaiting referendum, for example lowering the voting age and votes for those residing outside the state in presidential elections (Farrell, 2018).

Table 1: Assessing the ICC in terms of outcomes⁶

Topic	ICC output	Government reaction	Action?
1. Reduction of presidential term	3 recommendations	Government accepted 1 recommendation	Referendum in May 2015
2. Reduce voting age	1 recommendation	Government accepted this	Referendum was promised for 2015, now ‘deferred’(?)
3. Role of women in home/public life	2 recommendations	Ministerial task force to investigate further ⁷	Set up the Citizens Assembly on Gender Equality (2020)

⁶ Adapted from Farrell (2018).

⁷ The Government proposed holding a referendum on the article on ‘women in the home’ but backtracked due to criticism. It was sent to a Joint Oireachtas Committee, which couldn’t make a decision and then was referred to the new Citizens’ Assembly

4. Increasing women's participation in politics	3 recommendations	Ministerial task force to investigate further	Set up the Citizens Assembly on Gender Equality (2020)
5. Marriage equality	2 recommendations	Government agreed to referendum and to supporting legislation	Referendum in May 2015 and legislation in progress
6. Electoral system	10 recommendations	Government promised to establish an electoral commission	In December 2019 - Government approved the general scheme of a Bill to create an Electoral Commission following a public consultation
7. Votes for emigrants/N. Ireland residents in presidential elections	1 recommendation	Ministerial taskforce considered options	Referendum promised
8. Blasphemy	2 recommendations	Government has agreed to a referendum	Referendum held in October 2018 and was successfully passed
9. Dáil reform	12 recommendations		The bulk of the recommendations were implemented (by changes to Dáil standing orders) in June 2016
10. Economic, social and cultural rights	2 recommendations	Government rejected both.	

Ireland's Convention on the Constitution was a significant political institution that led to the achievement of two world firsts. On May 22nd 2015, Ireland became the first country in the world to support the introduction of marriage equality by popular vote. It was also the first time a recommendation (marriage equality) from a deliberative mini-public resulted in Constitutional change. Ireland's subsequent citizens' assemblies are also part of its legacy, as are the impact its processes have had on citizens' assemblies internationally.

The Citizens' Assembly (2016-2018)

Established by a Parliamentary resolution in October 2016, the Citizens' Assembly followed closely the model of the Constitutional Convention in having citizen members selected at random by a market research company, and an

independent chair (a supreme court judge). It was given five items to consider: abortion, the challenges and opportunities of an ageing population, fixed-term parliaments, the manner in which referenda are held, and how the state can make Ireland a leader in tackling climate change.

Not all topics were treated equally. The time devoted to a topic ranged from just one day in the case of fixed-term parliaments to nine and a half days in the case of abortion.

There were some differences in terms of the membership of the two Irish processes (notably that the Citizens' Assembly did not include politicians) and the range of topics on their agenda (fewer in the more recent case). But otherwise the Citizens' Assembly followed the same modus operandi as the Constitution (Farrell, Harris and Suiter 2018; Suiter, Farrell and Harris 2016). A secret-ballot vote was held at the end of each topic's deliberations. In the case of the 8th amendment, the members voted to replace the article with a new provision explicitly authorising the Irish parliament to legislate for abortion and for the substantial liberalisation of abortion provision.

The Assembly report was submitted to the Irish parliament, which convened a special Committee to consider it in detail, which in turn recommended a referendum and legislation to liberalize Ireland's abortion regime, a recommendation that was endorsed by the parliament. The referendum was held on 25 May 2018 with a near record turnout of 64 per cent. The electorate voted to repeal the 8th Amendment by a majority of 66 per cent to 34 per cent, a result noted for its similarity to that of the Citizens' Assembly vote.

The Assembly's second report was on how to make Ireland a world leader in tackling climate change. Its recommendations in this area were ambitious and radical. As per the Oireachtas resolution that established it, the Assembly's report was forwarded to the Joint Oireachtas Committee on Climate Action (JOCCA). The Committee's deliberations took place over 7 months and resulted in 42 priority recommendations and 39 ancillary ones.

By and large, it supported the Citizens' Assembly's recommendations with the exception of its recommendations on introducing a tax on GHG emissions from Agriculture. Nonetheless cross-party consensus was secured on the bulk of the Citizens' Assembly's recommendations and the Committee stressed its intention to 'elevate climate action to the same level of importance as finance and budgetary matters' (Houses of the Oireachtas, press release, 2019). This priority was captured in its detailed radical recommendations around the governance framework.

The report of the Joint Oireachtas Committee heavily influenced the cross-government Climate Action Plan, which was published in June 2019 (Government of Ireland, 2019). It was preceded by the declaration of a climate and biodiversity emergency by Dáil Éireann on 10 May 2019.

We are still waiting for an official Government response to the Assembly’s 3rd, 4th and 5th reports (see table 2 below). A general election took place on February 8th 2020 and at the time of writing a Government has yet to be formed.

Table 2. The Irish Citizens’ Assembly: topics, public interest, meetings, output

Topic	No. of days of meetings ⁸	Public submissions ⁹	Output	Date report sent to Parliament	Government reaction
The Eighth Amendment of the Constitution (abortion)	9.5 days	12,200	3 sets of recommendations (the latter two in various parts) plus 5 ancillary ones	29 June 2017	Considered by a special parliamentary committee. Government accepted proposal for a referendum. Referendum passed in May 2018
How we best respond to the challenges and opportunities of an ageing population	4 days	122	15 recommendations plus 6 ancillary ones	8 December 2017	Response to a parliamentary question by the Minister for Health on 15 May 2019, indicating that his Department is considering some of the proposals, but not accepting all
How the state can make Ireland a leader in tackling climate change	4 days	1,185	13 recommendations	18 April 2018	Considered by a special parliamentary committee whose report led to a Dáil motion declaring a ‘climate emergency’. This has resulted in a government report proposing radical steps to address climate change
The manner in which referenda are held	1.5 days	206	8 recommendations	21 June 2018	No reaction to date
Fixed term parliaments	1 day	8	7 recommendations	21 June 2018	No reaction to date

⁸ Based on the published schedules for each weekend. This does not account for timetable over-runs, which proved to be pretty acute on several weekends. The numbers of days of meeting have been rounded to the nearest half day, excluding the time spent voting and counting the ballots.

⁹ The number of public submissions on the topic in question published on the CA website.

The Citizens' Assembly on Gender Equality (2020)

Established by Parliamentary resolution in July 2019. It includes 99 randomly selected citizens (similar processes used to recruit the previous Citizens' Assembly) and an independent Chairperson. It was asked to look at:

- challenging the barriers and social ways of behaving that facilitate gender discrimination;
- to reassessing the economic value placed on work traditionally done by women;
- to looking at where the responsibility for care lies, especially within the family;
- assessing early years parental care and facilitating greater work life balance;
- and also scrutinising the structural pay inequalities that result in women being disproportionately represented in low pay sectors.

It began its work in January 2020 and was due to complete it in July 2020 (though the onset of the Coronavirus crisis has meant that its work has been suspended). It has the same modus operandi as the Citizens' Assembly (2016-2018) and its recommendations will be reported to the Houses of the Oireachtas and will be referred by it to the relevant Committee of both Houses for consideration. One notable difference between this Assembly and its predecessors is that its members are being paid a stipend on a per weekend basis.

Challenges and next developments

The Irish assemblies have faced challenges in terms of: attendance (they've struggled to achieve full attendance each weekend); agenda setting (their remit/agenda is defined in the Parliamentary resolutions that establish them); Government responsiveness (not all reports have received an official response and some recommendations have been simply rejected); lack of public awareness of the more obscure issues discussed by the ICC and the Citizens' Assembly; and the ad hoc establishment process (they are not formal, permanent institutions and are established on particular topics for a specified length of time at the discretion of the Government of the day).

Yet the Irish cases show that deliberative mini-publics can make a difference in terms of constitutional change and political processes. For example, at the time of writing, they have led to 4 constitutional referendums (3 of which have passed) as well as promises of future referendums. They have also contributed to policy change (climate action) as well as substantial revisions to Parliamentary procedures.

The Irish assembly process also highlights how deliberative democratic innovations can successfully complement representative and direct forms of democracy in ways that overcome relative shortcomings of each. Further, it has helped to deliver a more informed electorate (Suiter and Reidy, 2019).

Finally, they have become broadly accepted as way of ‘doing politics’, as witnessed by calls from civil society organisations, academics, interest groups and others for citizens’ assemblies on housing, education etc.

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