



Paper of

Prof. Gary Murphy

Dublin City University

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Referendums in Ireland - history and outcomes to date
Prof Gary Murphy
School of Law and Government, Dublin City University
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Introduction

Since its adoption by the people in a plebiscite in 1937 the Constitution of Ireland, *Bunreacht na hÉireann*, has regularly been subject to amendment and referendums have become a regular feature of the Irish political landscape. Ireland is one of the few countries where every constitutional amendment requires the consent of the people. Article 46 states that a proposal to amend the constitution must be passed by the houses of the *Oireachtas* and then be put to a vote of the people in referendum (Gallagher, 2017: 63). *Bunreacht na hÉireann*, like most written constitutions, is less easily amended than ordinary legislation. In the great majority of European countries, a referendum can only be triggered by one of the institutions of representative government, such as the government, a parliamentary majority, a specified minority in parliament, or the President (Gallagher, Laver, Mair, 2011: 370). The use of the referendum varies widely across Europe. Referendums are a regular occurrence in Switzerland where there have been over 550 since the Swiss Federal constitution of 1848 but these include direct citizens' initiatives. Italy is second only to Switzerland in the number of popular votes that take place. Since the adoption of the Italian constitution in 1948 the Italian people have voted in 72 national referendums. These are almost always about laws rather than constitutional reforms. Referendums on constitutional issues are a relatively common feature of politics in Denmark with sixteen referendums being held since 1953. By contrast there have been no referendums held in Germany since their constitution, the basic law, was adopted in 1949.

Ireland is a regular use of referendums and in total 40 amendment proposals have been approved by the *Oireachtas*. The first and second amendment bills referring to the state of emergency, and emergency provisions and various other matters were passed by the *Oireachtas* without a referendum in 1939 and 1941 respectively. This was because Article 51 permitted the *Oireachtas* to amend the Constitution for a period of three years up to June 1941 after the first president

entered office. Since the first referendum to amend the constitution in 1959 there have been 38 referendums. Of these 27 have been approved and 11 rejected by the people.

Of the 38 amendments, nine related to moral and religious issues, nine to the European Union, seven to voting, and four to various aspects of the political, governmental and judicial framework. There has been one referendum on Northern Ireland, one on citizenship, one on children's rights while the other six were on relatively minor or technical matters which did not engender particularly strong emotions.

There have been four repeat referendums; that is referendums where the people have been asked to vote on the same proposal. The first of these was to do with changing the electoral system from PRSTV to a first past the post system. The original proposal in 1959 was narrowly defeated with 51.8 per cent of people voting no, but the second was far more decisively rejected with 60.8 per cent against. Both referendums were extremely contentious with opponents saying that they were designed to enable Fianna Fáil to govern in perpetuity. Turnout for the second referendum went up 7.4 per cent to 65.8 per cent from 58.4 per cent.

In 1995 the people were asked to vote again to permit divorce despite having decisively rejected the original proposal in 1986 by a vote of 2:1. The second referendum was passed by the lowest majority in the history of referendums at 50.3 per cent, just over 9,000 votes. Turnout was up from 60.5 per cent in 1986 to 62.2 per cent in 1995.

In both the Nice Treaty referendum of 2001 and the Lisbon Treaty referendum of 2008 the people having originally said no were asked to vote again and the repeat referendums were subsequently passed in 2002 and 2009 respectively. Turnout was significantly up in the second Nice referendum to 48.5 per cent from a very poor 34.8 per cent in the first vote. On Lisbon turnout went up six points from 53 per cent to 59 per cent. So we can see that in three of the cases of repeat referendums the proposal was passed on the second attempt. These referendums all had the support of both government and opposition parties. The one proposal that was rejected was probably the most partisan with Fianna Fáil being the sole proponent of the electoral reform proposal while all other political groupings were against. There have been five

referendums on abortion but these have all been on differing aspects of the issue and cannot really be described as repeat referendums.

The Morality Referendums

Of the nine referendums on moral and religious issues, the first in 1972 to remove the ‘special position’ of the Catholic church was passed comfortably with the backing of all political parties. The only opposition came from conservative catholic groups. The yes vote was a massive 84.4 per cent and the turnout was just over 50 per cent. Over a decade later, however, the first of five referendums on abortion in just under twenty years engendered enormous passions and deep divisions both within political parties and in the country at large. In 1983 the eighth amendment to the constitution was aimed at preventing any legislation of abortion. The campaign was bitter and divisive and there was much initial controversy over the wording on the ballot paper. Fianna Fáil’s proposed wording was eventually adopted by the Oireachtas and the referendum was comfortably passed with 66.9 per cent voting yes on a 53.7 per cent turnout (Girvin, 1986).

Three further amendments on abortion were held on the same day in November 1992 as a result of a Supreme Court decision in the X case in March of that year which found that Article 40:3:3 did in fact confer a right to an abortion on a woman whose life would be threatened by continuing with a pregnancy – including cases where this risk arose from the possibility of suicide by the expectant mother. Two of these amendments stated that Article 40:3:3 did not limit either freedom to travel outside the state or freedom to obtain information about services lawfully available in other states and were comfortably passed. A third proposal was much more controversial and would have permitted abortion only in cases where a continued pregnancy would have meant a risk to ‘the life, as distinct from the health, of the mother’ (except where the risk to life arose from the possibility of suicide). This was defeated with 65.4 per cent voting against on a turnout of 68.2 per cent. In 2002 another amendment whose essential purpose was to remove the possibility of suicide by the mother as a justifiable basis for abortion was narrowly defeated by 50.4 per cent of voters on a turnout of just under 43 per cent (Murphy, 2017: 283).

Divorce was the other issue which dominated the moral agenda in Ireland in the 1980s and 1990s. In 1986, as part of the Garret FitzGerald led Fine Gael Labour government's constitutional crusade, an amendment to allow for the legalisation of divorce in restricted circumstances was held. The government itself was divided over the amendment. Fianna Fáil in opposition was strongly against and the amendment was decisively rejected with 63.5 against on a turnout of 60.5 per cent. In 1995 the second divorce referendum was passed and Article 41 of the constitution was subsequently amended to allow for divorce in very specific circumstances which are spelled out clearly in the new article.

Finally in 2015, same-sex marriage was legalised via referendum when 62.1 per cent of voters agreed to further amend Article 41 on a turnout of 60.5 per cent. This was the highest turnout at a referendum since the divorce referendum of 1995, a period in which there were nineteen further referendums. The same-sex marriage referendum was a rather unusual one in that the onus for the vote came from an experiment in deliberative politics in the form of the Irish Constitutional Convention (Elkink et al, 2017: 369-70). All other referendums have been driven by the political parties although the impetus for the original abortion referendum in 1983 came from pressure put on the major political parties of the day by pro-life interest groups (Murphy, 2016: 26). The pattern of voting in these moral referendums has been relatively similar. While Ireland has clearly liberalised over the thirty years since the 1983 abortion referendum there has been a strong consistency as to which constituencies are the most liberal and which are the most conservative and there also been a strong urban rural divide.

The European Referendums

The other main focus of amendments to the constitution has been Ireland's relationship to the European Union. Ireland's original accession to the EEC came via referendum in 1972 and there have been eight other referendums to do with various aspects of deepening Ireland's involvement in the EU. Joining the EEC in the first place required a referendum as the obligations for membership would have been in conflict with the constitution in that the EEC's institutions would have had the power to make laws for the state. Moreover, the EEC's Court of Justice would be superior to Ireland's Supreme Court. This would have conflicted with articles 15:2:1

affirming the legislative monopoly of the Oireachtas and 34:4:6 affirming the finality of all judgments of the Supreme Court. A decision was taken by the then Fianna Fáil government not to amend the particular articles affected but to create a new subsection Article 29:4:3 allowing the state to join the EEC and adding the rider that “No provision of this constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities” (Gallagher, 2017: 65).

The next European amendment came in 1987 with the referendum to allow the state to ratify the Single European Act. The minority Fianna Fáil government neither wanted nor expected to have a referendum on this issue but the Supreme Court in the Crotty judgment voted 3-2 that the government could not sign the Single European Act on the ground that to do so would restrict the freedom of governments to conduct an independent foreign policy. As a result, every subsequent major EU treaty has required constitutional change and hence a referendum (Laffan and Tonra, 2017: 358-9). The 1987 referendum was comfortably passed with close to 70 per cent voting yes on a turnout of just under 44 per cent.

This referendum was followed, in turn, by referendums on the Treaty on European Union (Maastricht) in 1992, the Amsterdam Treaty in 1998, and the Nice Treaty in 2001. Maastricht with 69 per cent voting yes on a 57.3 per cent turnout endorsed Ireland’s participation in the single currency. The numbers supporting a yes vote fell to 61.7 per cent in the Amsterdam referendum on a turnout of 56.2 per cent. The decisive rejection of the Nice Treaty in June 2001 when 54 per cent voted no on a very low turnout of just 34.8 per cent came as a profound shock to the government, its EU partners and to the candidate states in Central Europe that were affected by the result. The Fianna Fáil Progressive Democrat government responded by establishing the National Forum on Europe and brought forward new legislation to improve parliamentary scrutiny of Ireland’s European policy. It also secured guarantees from the EU that Ireland’s participation in the EU’s Common Foreign and Security Policy did not prejudice its traditional policy of military neutrality and that European treaties did not impose mutual defence commitments. The government then re-ran the referendum in October 2002 securing a yes vote of 63 per cent on a turnout of 48.5 per cent (Laffan and Tonra, 2017: 359). The first Nice Treaty was held on the same day as referendums to prohibit legislation allowing for the death penalty

and to permit ratification of the International Criminal Court, both of which were comfortably passed while the Amsterdam referendum was held on the same day as the Good Friday Agreement.

It was a similar tale with the Lisbon treaty of 2008. This time the referendum was defeated with 53.4 per cent voting no on a turnout of 53.1 per cent. The Lisbon treaty showed the difficulty with referendums on European integration as a whole range of issues which had nothing to do with the treaty ended up being discussed among them abortion and hospital waiting lists. The Lisbon treaty saw the entry into the fray of a new political grouping, Libertas, who used the occasion to advocate for a specific neo-liberal vision of the EU (Murphy, 2017: 286; Quinlan, 2009: 111-2). The referendum was also notable for the sharp differences in demographic voting with the unskilled working classes more likely to vote no and the affluent middle classes more likely to vote yes. This led to yet another re-evaluation of Ireland's membership of the EU and the type of Union that Irish people wanted to see. Another set of political and legal assurances were eventually received by the EU and the voters went back to vote in a re-run referendum in October 2009 where a significant majority of 67 per cent voted yes on a turnout of 59 per cent (Quinlan, 2012). There was one further EU referendum in May 2012 when 60.5 per cent voted yes on a 50.5 per cent turnout to the Fiscal Stability Treaty designed to tighten budgetary rules within the Eurozone. This was a rather complex treaty and as the referendum took place during the ongoing economic crisis, the majority of voters seemed to take the view that with the country mired in an economic trough it was best to vote yes.

The state referendums

Of the seven referendums concerning voting rights, the second electoral system referendum in 1968 was coupled with a proposal that was designed to permit rural voters to be over-represented at the expense of urban voters. Both were defeated. The other referendums were relatively non-contentious. The most interesting perhaps was that on Seanad representation in 1979 when 92.4 per cent of the people on a turnout of just 28.6 per cent voted to allow for alteration of university representation in the Seanad. Some 38 years later that decision of the people has still not been acted upon. In 1984 a proposal to permit the Oireachtas to extend the vote to non-citizens was

comfortably carried while in 1999 constitutional recognition was given to local government and stipulated that local elections must take place every five years (Gallagher, 2017: 65).

Four referendums related to the main institutions of the state. Two of these were rejected and two were passed. In 2011 the people refused to give greater powers to Oireachtas committees and in 2013 they rejected the proposal to abolish the Seanad. In 2011 on the same date as the parliamentary inquiries referendum the people agreed to permit the salaries of judges to be reduced in line with other public servants and in 2013 on the same date as the Seanad vote they allowed for the creation of the Court of Appeal. The turnouts on both days were practically identical with 56 per cent of the people voting in both referendums in 2011 and 39.2 per cent voting in both referendums in 2013. The 2011 vote was held on the same date as the Presidential election. In 2015 the same-sex marriage vote and the proposal to reduce the age limit for presidential candidates to 21 were also held on the same day and had a similar turnout of 60.5 per cent. Again the people voted decisively yes for one referendum, 62.1 per cent for same-sex marriage and overwhelmingly no, 73.1 per cent against reducing the age limit. The 26.9 per in favour was the lowest yes vote of any proposal to change the constitution in the history of the state.

The 1998 Good Friday agreement, also known as the Belfast Agreement, involved referendums in both Northern Ireland and the Republic of Ireland. The referendums were held on 22 May 1998 and the wording of the question on the ballot paper was different in the two jurisdictions. The turnout in the Republic was 56.3 per cent and 94.4 per cent of the people endorsed the changes to articles 2 and 3 of the constitution which laid territorial claim to the whole island of Ireland. The new article 2 stated that everyone born on the island of Ireland was entitled to be a member of the Irish nation and that was “also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland”. Article 3 stated that a united Ireland could only be brought about through peaceful means with the consent of the majority of the people in both jurisdictions and also allowed for the establishment of North-South bodies. In 2004 over fears that the Good Friday Agreement basically conferred an automatic right to Irish citizenship to anyone born on the island of Ireland, a proposal to remove this right through the addition of a new section to Article 9 was approved by close to 80 per cent of the voters on a turnout of just

under 60 per cent. The aim of this referendum was to close off what the then government considered to be an unintended loophole which allowed for so-called ‘citizenship tourism’ and provided that children born on the island of Ireland to parents who were both foreign nationals would no longer have a constitutional right to citizenship of the Republic of Ireland.

Conclusion

Ultimately the referendum requirement in Article 46 of the constitution has been a powerful check on governments of all hues who might have wanted to make changes that do not have broad support across the political spectrum. Only on one occasion – the original plebiscite to adopt the constitution itself – have the people approved a proposal not backed by the major opposition party. Since then when governments have proposed amendments not supported by the main opposition party, the people have rejected them. We count here Fianna Fáil’s attempts in 1959 and 1968 to change the electoral system; the efforts by Fianna Fáil led governments to restrict the circumstance under which abortion could be made legal in 1992 and 2002; Fine Gael and Labour’s attempts to permit divorce in 1986; and Fine Gael and Labour’s proposal to abolish the Seanad in 2013 (Gallagher, 2017: 66). The requirement that no changes to the constitution can be made without a referendum certainly enhances the status of the constitution amongst the people as its contents remain under their control. Thus significant and often controversial changes to the constitution in areas such as morality, the EU, and Northern Ireland have the imprimatur of the people and a legitimacy that could not be achieved by politicians making these decisions in parliament. Drawbacks include the cost of referendums and the complexity of some referendums, for instance, that on the Fiscal Stability Treaty in 2012. But the referendum act of 1998 with its provision to establish a referendum commission for every referendum, which would have as its principal function the provision of information to the electorate in respect of the referendum, goes some way to ensuring that citizens are knowledgeable on the issues on which they are being asked to change their constitution. That is the least citizens need as changing the constitution is unquestionably an act of significant civic duty and the more information citizens have before doing so the better.

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