

Referendums: learning from the Irish experience

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Ireland is a useful comparator for the UK on this subject because it has much the same institutional set up and quite similar political culture, both inherited from the British. One fundamental difference is the existence of a codified constitution which is quite rigid requiring a referendum of the people to change it and it is for this reason that Ireland is a country with more experience of referendums than most others.

1. The referendum as a tool can give a good deal of democratic weight to a decision, and allows the people and political class to focus on an issue in quite a concentrated way. This enables the citizens of a country to learn quite deeply about the topic. At a time when many are extolling the virtues of deliberative democracy, it might then be thought to produce better decisions. That said, referendum campaigns can become dominated by non-issues when the actual subject of the referendum is not very accessible – for instance abortion and conscription became major issues in the referendums on the Lisbon Treaty.
2. The major issue of how a referendum would work in the UK is to do with what referendum proposes to do. In Ireland it is clearly used just to change the constitution, which is somewhat inefficient when there are minor housekeeping changes requiring very expensive campaigns, often with little public or political engagement. It is also arguable that some issues, such as EU Treaties are too complex for ordinary people to understand, and instead other issues that people can understand are projected on to the actual question. Other issues are so technical in nature that they hardly require or can be useful or interesting to ordinary citizens – an example might be the referendum on the confidentiality of cabinet discussions.
3. As the UK has no codified constitution, or at least no single document it can call the constitution, this is not going to be the issue/ route to referendums, but one could argue that major constitutional changes, such as the decision to join the EEC should require the assent of the people, and that this would give democratic weight and some permanence to such a decision. The Irish Supreme Court has ruled that any Treaty of the EU also has constitutional force and requires constitutional amendment which at least engages the Irish people in these subjects more than in most other countries. The question arises, who, in the UK could decide what is a 'major' constitutional issue? If it

were the government, this would make a mockery of the constitution. Perhaps parliament could with a statutorily-guaranteed free vote.

4. The question of whether it supplants parliamentary sovereignty is important, but arguably for certain issues that are of such importance, one would not want to see parliament able to change the constitution very easily – for instance the proposal to abolish the post of Lord Chancellor. But does one really want/ expect that ordinary citizens are interested/ qualified to have informed opinions on this type of subject. A better solution might be to look at the Swedish system where constitutional changes are made by legislation at both sides of a general election, so at least two parliaments have acceded to the changes and the public have the ability to make it an election issue if they so want.
5. As well as constitutional issues, in Ireland moral issues have become ‘constitutional’ issues. Abortion, especially has become a major issue in the courts, mainly because a clause in the constitution was open to differing interpretations. As such the law on abortion in Ireland is given to us by the courts rather than the Oireachtas (parliament). The courts have not overtly attempted to take on this role, it has been pushed on them by a legislature unwilling to legislate and the pretty horrific cases that it has asked to adjudicate on. At times politicians are happy to push out issues to referendum, especially where there are splits within parties, this can reduce the pressures of fissure – this I suspect was one of the reasons for the referendum on EEC membership in the UK. Sometimes referendums are of purely optical value, so next year (2010) Ireland will probably have a referendum on enshrining children’s rights with constitutional guarantee, which will probably be legally valueless as the courts already regard children as individuals with rights independent of their parents, but it will show that the government ‘cares’, and is willing to act on the horrific revelations of the systematic abuse sanctioned by the Catholic Church in Ireland on children in its care – at €3m it is an expensive PR exercise.
6. In Ireland referendums are conducted under rules resulting from a number of legal challenges. So government cannot use public funds to campaign for a specific result, which on the whole seems fair, and does force political parties to campaign and use their own resources, therefore minimising the likelihood of spurious referendums. Ireland, again as a result of legal rulings, has an independent Referendum Commission which non-partisan information on the subject of the referendum. It is argued that very often this information is so banal it depresses turnout and the Commission does not engage in the veracity of the points made in the course of the campaign, making it largely irrelevant. Furthermore broadcasting rules require equal time be given

to each side which leads to some odd situations where unelected interest groups who have positions contrary to the political parties get inordinate amounts of air-time. One could of course argue that this at least ensures that there is a healthy contestability of views. But overall it seems that most agree this is not a model one would want to adopt.

7. Ireland has no threshold requirement for referendums affecting the constitution (there are turnout requirements for other types of referendum, but these have never taken place) and a simple majority is required. Turnout is seen to have been a determining factor in the defeat of the Nice and Lisbon Treaties in 2001 and 2008 respectively – both subsequently overturned by a second referendum with significantly higher turnout. As such it would appear that turnout is important, as a low turnout may indicate that only small elements of the electorate, with views that do not accord with the rest of the population have engaged. If one includes a turnout requirement it can also lead to deliberate intention to defeat a proposal that might otherwise be passed. It is also instructive that the weather on the day of a divorce referendum in 1995 might have had an impact as it rained in the more conservative west, thus depressing turnout there, whereas it was fine on the more liberal east coast.
8. Referendum wording tend to indicate two options, accepting or rejecting a proposal and as such give a good deal of power to the group writing that proposal – it is arguable that the 1995 divorce referendum was passed only because the government using opinion poll evidence had submitted a wording that it estimated could be passed, anything more liberal, might have been rejected. Therefore a great deal of power would be given to those framing the questions (even informally). For instance, when there was a discussion of having a referendum on the EU's Constitutional Treaty in the UK, the then prime minister, Tony Blair, suggested that the referendum would be about whether Britain wanted to be in Europe or out of it, thus framing the referendum about Britain's membership of the EU rather than just its accession to the Treaty.
9. Multi-option questions might enable one draw a more accurate picture of what the electorate actually wants – if indeed we feel that the electorate wants something coherent, i.e. that there is a 'will of the people' rather than a collection of 'wills'. It might be cheaper and easier to commission an opinion poll on the subject, and I suspect this is frequently employed by government considering major legislative changes already. The argument in favour of the referendum is that people might think more deeply when they are being asked to go out and vote rather than been asked a question on their doorstep by a nice lady from Mori. This is why it is important that any referendum should

be binding, otherwise the whole point of it is cast aside. Again one needs to be careful as if you decide to ask questions on a number of aspects of a certain issue, one might get contradictory results – for example if asked two questions on abortion, one on whether to allow it or not and a second as to what stage in pregnancy it should be allowed might yield a result that the people want to ban abortion in all circumstances *and* to allow it only before 16 weeks of pregnancy. One can also see where voters would support proposals to extend health care rights to all and reduce taxation. It might then be useful to ask a single question on a broad principle. But the question of what legislation will be enacted following a referendum is important, as if the legislation is not on offer, voters are essentially being asked to vote in the dark – as frequently happens on abortion referendums in Ireland.

10. Overall the experience of the referendum in Ireland points to a healthy democratic legitimacy and engagement with the constitution as a document. But there have been some problems which should not be repeated. The rigidity of the Irish constitution means that some legitimate attempts to steer public policy in one direction or another have been thwarted or not even undertaken because of the potential difficulties posed by holding a referendum on an awkward subject that would not necessarily be easy to sell to the people.