



Constitutional Conversations, No. 2 of 6

Reviewing Constitutions: The Role of Constitutional Conventions

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This report summarises the second session of Constitutional Conversations 2016, focusing on the process of reviewing constitutions and the role of constitutional conventions. The conversation aimed at reflecting on the recent experience of the Irish Constitutional Convention (2012–14) where a deliberating body of 100 individuals (66 randomly selected citizens, 33 elected representatives of the parliamentary parties from the Republic of Ireland and Northern Ireland, and an independent Chairman) deliberated selected aspects of the Constitution and put forward a set of recommendations for constitutional change to the Oireachtas. Three panellists involved in various capacities in the Convention were asked to address the value of the recent Convention, the desirability of a similar body to address fresh issues, and ways in which the effectiveness of this formula may be enhanced in the future. The presentations on the origins of the Convention, its composition, working principles and methods were followed by discussions on the legitimacy of the Convention, the future use of citizen-orientated processes to review constitutions and ways to improve the model in the future.

The Irish experience was viewed as part of an emerging global trend of introducing citizen-orientated decision-making mechanisms in various democracies such as Estonia, Romania, Belgium, Luxembourg and Iceland. After the financial crisis of 2008–09 all Irish political parties committed to some form of constitutional reform prior to 2011 elections, and citizen engagement was viewed as an appropriate way to restore faith in the democratic system.

Panellists shared with the participants their views on the challenges and the lessons learnt during the most recent constitutional review process. Legitimacy was one of the key elements to measure the success of all stages of the review process. First, there should be input legitimacy, which has to address the issue of representativeness of the members and the relevance of the questions selected for deliberation. Second, one has to assess the output legitimacy, or the extent to which the process yields tangible results in terms of actionable and meaningful proposals for constitutional interventions that are followed through. Finally, the overall process between input and output should be legitimate and seen as such by the general public (thorough legitimacy).

Although its composition and the issues to be deliberated were established by the Oireachtas, the fact that citizens composed a two-thirds majority in the Convention was considered as one of the main values of the Irish experience. To ensure input legitimacy, the working methods and rules of procedure were designed to respect gender equality, the equality of voice between citizens and politicians and the promotion of the representation of different viewpoints through civil society organisations (CSOs). On the other hand, the fact that the Oireachtas has neither considered nor acted upon various other reports of the Convention was identified as an outcome limitation of the Irish experience.

Discussants were particularly critical of the lack of any follow-up on two important issues that the Convention deliberated and recommended changes on, namely the provision of Articles 41.1 and 41.2 on the role of women as well as the right of citizens residing outside the State to vote in presidential elections. This was found to be of particular concern since the Committee on the Elimination of Discrimination against Women (CEDAW) has repeatedly criticised Ireland for maintaining outdated constitutional clauses on the role of women in the home, and failing to encourage greater participation of women in public life.

Discussions also focused on the usefulness of the constitutional convention model, the need to enhance the use of direct democracy in the Irish political process, the type of issues which should be deliberated in future conventions and additional process design issues. With regard to the future applicability of such a model,

participants offered broad support to expand the use of direct democracy by exploring the introduction of some form of direct democracy by which citizens can have more say in the political process, using the language of the Irish Free State Constitution of 1922 on direct democracy as a starting point. Others suggested that the Swiss model of widely used citizen initiatives requiring the collection of a mandatory number of citizen signatures should also be considered.

One of the suggestions was that if the convention mechanism is used in the future, it should deliberate on a limited number of issues which are very important and precious to Irish society as a whole. Such issues may include the ban on abortion enshrined in the 8th Amendment of the Irish Constitution or the role of women. In retrospect, some participants thought that the voting age and presidential term of office were not sufficiently important or controversial to be in the scope of work of the last convention.

In order to avoid the possibility that political parties indirectly capture or instrumentalise constitutional review bodies, participants emphasised the need for a more inclusive and transparent process in defining the questions to be put forward to the convention, the manner in which questions are framed, and the procedures for selecting citizens, independent experts and civil society groups participating in or addressing the convention.

In general, participants suggested that since the Constitution is a “living document” it is better to make the review processes more open, democratic and inclusive. Future efforts should focus on broader inclusion of minority communities, particularly the Irish traveller and “new Irish” communities. The state should invest more time and resources in educating citizens so that they make more informed decisions about the complex constitutional issues at hand. The work of any future convention also needs to be accompanied by a well-designed and aggressive public awareness campaign to attract broader citizen interest.

In conclusion, participants agreed that given the limited scope and mixed results of the first Irish Constitutional Convention, the model must be improved and then replicated so that citizens can make a real and meaningful contribution to the constitutional review processes.

Convenor: John Coakley MRIA
Chair: David Farrell MRIA
Panellists: Tom Arnold MRIA, Director General, IIEA
Art O’Leary, Secretary General to the President of Ireland
Jane Suiter, Director of the Institute for Future Media and
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