



Sixth Progress Report

The Referendum

COISTE UILE-PHÁIRTÍ AN
OIREACHTAIS AR AN mBUNREACTH

THE ALL-PARTY OIREACHTAS
COMMITTEE ON THE CONSTITUTION

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The All-Party Oireachtas Committee was established on 16 October 1997. Its terms of reference are:

In order to provide focus to the place and relevance of the Constitution and to establish those areas where Constitutional change may be desirable or necessary, the All-Party Committee will undertake a full review of the Constitution. In undertaking this review, the All-Party Committee will have regard to the following:

- a the Report of the Constitution Review Group*
- b participation in the All-Party Committee would involve no obligation to support any recommendations which might be made, even if made unanimously*
- c members of the All-Party Committee, either as individuals or as Party representatives, would not be regarded as committed in any way to support such recommendations*
- d members of the All-Party Committee shall keep their respective Party Leaders informed from time to time of the progress of the Committee's work*
- e none of the parties, in Government or Opposition, would be precluded from dealing with matters within the All-Party Committee's terms of reference while it is sitting, and*
- f whether there might be a single draft of non-controversial amendments to the Constitution to deal with technical matters.*

The committee comprises eight TDs and four senators:

Brian Lenihan, TD (FF), *chairman*
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Brendan Daly, TD (FF)
Senator John Dardis (PD)
Thomas Enright, TD (FG)
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The secretariat is provided by the Institute of Public Administration:

Jim O’Donnell, *secretary*

While no constitutional issue is excluded from consideration by the committee, it is not a body with exclusive concern for constitutional amendments: the Government, as the executive, is free to make constitutional proposals at any time.

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Foreword

In its survey of the institutions of State the committee dealt with the President in its *Third Progress Report* and with the courts and the judiciary in its *Fourth Progress Report*. The present report deals with a major procedure related to the Constitution, namely the constitutional referendum.

Brian Lenihan, TD

Chairman

November 2001

The Referendum

Article 46

46.1 Any provision of this Constitution may be amended, whether by way of variation, addition, or repeal, in the manner provided by this Article.

46.2 Every proposal for an amendment of this Constitution shall be initiated in Dáil Éireann as a Bill, and shall upon having been passed or deemed to have been passed by both Houses of the Oireachtas, be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum.

46.3 Every such Bill shall be expressed to be “An Act to amend the Constitution”.

46.4 A Bill containing a proposal or proposals for the amendment of this Constitution shall not contain any other proposal.

46.5 A Bill containing a proposal for the amendment of this Constitution shall be signed by the President forthwith upon his being satisfied that the provisions of this Article have been complied with in respect thereof and that such proposal has been duly approved by the people in accordance with the provisions of section 1 of Article 47 of this Constitution and shall be duly promulgated by the President as a law.

The referendum

Bunreacht na hÉireann provides that the Constitution can be amended by way of variation, addition, or repeal by a majority of the people who vote in a referendum. It is the Houses of the Oireachtas that decide what shall be submitted to the people (Articles 46 and 47).

General context

Since the seventeenth century, democrats have divided into two schools – the direct democracy school in which the people are directly consulted¹ and the representationist school in which the people are indirectly consulted through their representatives.² Of all the democracies in the world Switzerland alone approaches the direct democracy ideal. Half of the eight hundred or so referendums that have taken place at the national level that we have record of have been held in Switzerland. The number of other democracies in which referendums have played a continuous role in politics is small.³

EU context

At present The European Union comprises fifteen democracies – Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. All of these except the United Kingdom have written constitutions. Three of them – Belgium, the Netherlands, and Norway – make no provision for the referendum in their constitutions. There is a provision for the referendum in the Luxembourg constitution but it is only of a

¹ favoured by Jean Jacques Rousseau

² favoured by John Stuart Mill

³ see *Referendums Around the World*, eds David Butler and Austin Ranney, 1994.

Article 47

47.1 Every proposal for an amendment of this Constitution which is submitted by Referendum to the decision of the people shall, for the purpose of Article 46 of this Constitution, be held to have been approved by the people, if, upon having been so submitted, a majority of the votes cast at such Referendum shall have been cast in favour of its enactment into law.

47.2.1° Every proposal, other than a proposal to amend the Constitution, which is submitted by Referendum to the decision of the people shall be held to have been vetoed by the people if a majority of the votes cast at such Referendum shall have been cast against its enactment into law and if the votes so cast against its enactment into law shall have amounted to not less than thirty-three and one-third per cent of the voters on the register.

47.2.2° Every proposal, other than a proposal to amend the Constitution, which is submitted by Referendum to the decision of the people shall for the purposes of Article 27 hereof be held to have been approved by the people unless vetoed by them in accordance with the provisions of the foregoing sub-section of this section.

47.2.3° Every citizen who has the right to vote at an election for members of Dáil Éireann shall have the right to vote at a Referendum.

47.2.4° Subject as aforesaid, the Referendum shall be regulated by law.

consultative character. The last Luxembourg referendum was held in 1919. Finland has made provision for the referendum since 1987, and Portugal since 1989. Germany provides for the referendum only to reorganise *Land* boundaries. The United Kingdom was regarded as a representative democracy in which the referendum had no place. However, Harold Wilson held a referendum in 1975 on EEC membership and Tony Blair has promised one on the euro. The Netherlands is the only EU member state never to have held a referendum. The referendum has been used in Belgium, although it is not mentioned in its constitution, and it was used in Finland before constitutional provision was made for it.

Six EU member states – Austria, Belgium, Finland, Germany, Portugal and the United Kingdom – have held one national referendum under their current constitutions. In two other democracies, Greece and Spain, the referendum has been used to restore democracy in the state. Spain held one further referendum on membership of NATO. There are five EU member states in which the referendum has been a significant feature of politics in the postwar period – Denmark, France, Ireland, Italy, and Sweden. Among these, Ireland is second only to Italy in the experience of holding referendums. Between the enactment of the Constitution in 1937 and 2001 Ireland has held twenty-five referendums. Six of these were rejected by the people (see Appendix I).

Attitudes to the referendum

It is clear that most of our EU partners believe that democratic decisions can be arrived at on virtually all political issues by relying on representative institutions rather than on referendums. Some entertain a low opinion of referendums as instruments of democracy. In France the referendum, often referred to as a plebiscite, was used to legitimate Napoleon's imperial power. In twentieth century Germany and in a number of other countries, the referendum was used to further totalitarian objectives. In those countries the referendum allowed demagogic appeals to the

general population to bypass political parties and representative institutions.

In Ireland the referendum is a well established feature of the political landscape. The legitimacy of our Constitution flows from its enactment by the people in a referendum. The logical corollary is that if the Constitution is legitimated through enactment by the people, any change in the Constitution must be legitimated in the same manner.

But are referendums necessary?

It can be argued that referendums are unnecessary. Some commentators argue that a sufficient democratic expression can take place in representative institutions whose members are held accountable by periodic general elections. Others question the practicability of referendums. The issues put to the people may be complex and technical. An analogy is drawn with the problem posed in modern courts where a jury of twelve are asked to decide cases involving such matters as international corporate fraud or technical patents. Recent referendums on EU membership have required cross-reference to complex international treaties.

Nevertheless, the referendum has been a familiar feature in the Irish constitutional landscape since 1937. The power of ultimate decision vested in the people has been exercised on twenty-five occasions in the past forty-two years.

The Constitution Review Group discussed nine issues relating to the referendum (see Appendix II). In relation to eight issues the Review Group recommended no change, namely

- whether some provisions of the Constitution are so fundamental that they should not be open to amendment

- whether provisions ensuring minority rights should be exempt from amendment

- whether a qualified majority in a referendum should be required to amend certain provisions of the Constitution
- whether amendments to the Constitution (i) of a purely stylistic or technical nature not involving a change of substance or (ii) involving minor or insignificant changes of substance, should be made by a mechanism not involving a referendum
- whether there should be a provision prohibiting the submission of a Bill containing a number of proposals for amendments which have different substantive effects for decision by the people in a referendum by means of a single vote
- whether provision should be made for a popular initiative to amend the Constitution otherwise than by the existing provisions of Articles 46 and 47
- whether provision should be made for amendment of the Constitution by way of a preferendum instead of/as well as a referendum
- whether the Constitution should be amended to provide that a Bill to amend the Constitution must be submitted to a referendum within a specified period after its passage by both Houses of the Oireachtas.

The Constitution Review Group considered these issues and concluded that no change was required. This committee agrees with their conclusions. The present constitutional arrangement ensures that any proposal for constitutional change must be deliberated upon by both Houses of the Oireachtas.

Parliamentary approval of all proposals for amendment is an essential safeguard for the protection of minority rights.

Parliamentary deliberation on all proposals for amendment ensures that a proposal is thought out and consistent with the

scheme of the Constitution. The committee received submissions in favour of a preferendum system of amendment where voters are asked to choose from a range of options. Whatever the theoretical attraction of a preferendum system the committee concluded that it was impossible to devise a satisfactory method of weighing voting preferences in such a system.

The Constitution Review Group considered whether there should be an amendment to permit State funding of support for a proposal for an amendment. The Review Group concluded that there ought not to be a constitutional barrier to the public funding of a referendum campaign provided that the manner of equitable allotment of such funding is entrusted to an independent body such as the proposed Constituency Commission. The Constitution Review Group recommended that Article 47.4 of the Constitution should be amended accordingly. As this is the sole recommendation of the Review Group in relation to the Referendum procedure we set out their reasoning in full:

Exchequer funding to promote, and to seek to secure the passage of, proposed amendments to the Constitution occurred in relation to a number of amendments which were accepted by the people. These included the 1972 amendment to authorise entry into the EEC and subsequent amendments approving ratification of the Single European Act and the Maastricht Treaty. Public funding was also used in 1992 to support the series of referendums concerning Article 40.3.3°, relating to the rights to life, travel and information. Recently, the question of public funding in relation to a referendum became a matter of controversy resulting in litigation. The use of public funding was initially upheld by a decision of the High Court in *McKenna v An Taoiseach (No 1)* [1995] 2 IR 1 and (it seems) also by the Supreme Court in the case of *Slattery v An Taoiseach* [1993] 1 IR 286. However, in *McKenna v An Taoiseach (No2)* [1995] 2 IR 10 it was ruled that the provision and use of such funding in

order to seek to secure the passage of the divorce amendment was unconstitutional. This decision was handed down a week prior to the referendum taking place and gave rise to a petition to the court seeking to overturn the result of the referendum.

The Review Group has considered whether the Constitution should authorise the use of such public funding and, if so, in what circumstances.

A possible approach would be to extend Article 47.4 (which reads, ‘Subject as aforesaid, the Referendum shall be regulated by law’) on the following lines:

Such law may provide for limited public funding in relation to any proposed amendment and shall entrust the equitable distribution of such funding to an independent body.

Arguments for

- 1 it appears unreasonable that a Government with a programme of constitutional reform approved by the Oireachtas may not spend public money in order to promote that reform
- 2 a political party may campaign and be elected on the basis of advocating constitutional change either generally or specifically and may form a Government on this basis. The position following the *McKenna* case appears to be an unreasonable hindrance to the fulfilment of democratic objectives already sanctioned by the people
- 3 apart from any constitutional reform resulting from the current review, circumstances now unforeseen or some interpretation of existing provisions of the Constitution may create a popular demand for constitutional amendment and it would be unreasonable that the Government could not expend public monies, voted by Dáil Éireann, in seeking to secure such changes

- 4 on one view of the logic of the *McKenna* case, namely, that the public should not have their money spent in an effort to persuade them against their will in relation to the merits of any particular proposal, the result might be to impede any meaningful discussion of a constitutional amendment in so far as it was publicly funded, either directly or indirectly.

Arguments against

The arguments against the proposal were fully canvassed in the *McKenna* case and are set out in the majority judgments of the Supreme Court. They need not be reproduced in full here. They include respect for the equality of the voting power of the citizens, the right not to be forced to finance the enactment of views contrary to one's own wishes, fairness of procedure, equality of treatment, respect for the democratic rights of citizens, the alleged lack of any Government role in ensuring the passage of the amendment proposed.

A referendum code

Experience of the nine referendums since the report of the Constitution Review Group was published forces a re-visiting of the difficulties relating to the conduct of referendums and the funding of them. In general, the development of a referendum code is required.

Until 1971, amendment campaigns were conducted by political parties using their own resources. During the 1972 referendum on accession to the European Communities the political parties circulated publications to the electorate post-free. The Government published a White Paper and several documents on the terms of entry and their implications, dealing with issues raised in detailed surveys of public attitudes. After 1972 it became the practice for the government department which was sponsoring an amendment to mount a publicity campaign supporting a 'yes' vote. Spending by political parties declined

because of the rising burden of costs for general and local election campaigns.

In 1995 Dáil Éireann voted £500,000 to the Minister for Equality and Law Reform to finance a government-sponsored promotional campaign in favour of a 'yes' vote in the divorce referendum. Patricia McKenna MEP instituted High Court proceedings to restrain this use of public funds.

Court rulings

In the *McKenna* case the Supreme Court ruled that the government, in expending public moneys in the promotion of a particular result in the 1995 referendum had acted in breach of the Constitution. The judgments delivered in *McKenna* disclose several strands of reasoning. Hamilton CJ focused on the role of the people in amending the Constitution:

The role of the People in amending the Constitution cannot be overemphasised. It is solely their prerogative to amend any provision thereof by way of variation, addition, or repeal or to refuse to amend. The decision is theirs and theirs alone [1995] 2 IR 41.

This emphasis on the exclusive role of the people in this area led to the concept of 'interference' in the prerogative of the people and to the conclusion that

the People, by virtue of the democratic nature of the State enshrined in the Constitution, are entitled to be permitted to reach their decision free from unauthorised interference by any of the organs of State that they, the People, have created by the enactment of the Constitution.

Finally, the Chief Justice held that the use by the government of public funds in a campaign in favour of a 'yes' vote was contrary to the requirement of 'fair procedures' and an infringement of the concept of equality.

O'Flaherty J dealt with the historical context of the referendum in Ireland and concentrated on the equality issue, ruling that 'it is impermissible for the Government to spend public money in the course of a referendum campaign to benefit one side rather than the other' (ibid. 44). At the same time, he was concerned that the court should not 'be regarded as having consequences wider than is required by the matter at issue' (ibid. 46), in particular that it should not be interpreted as ruling out the use by government ministers of their state transport or resort by them to the media to put forward their point of view.

The reasoning of Blayney J turned on the question of 'fair procedures':

Has the executive observed fair procedures in submitting the amendment to the decision of the People? In my view it has not. The Government has not held the scales equally between those who support and those who oppose the amendment (ibid. 50).

Blayney J's judgment also distinguished between the role of the Oireachtas and that of the government, noting that the task of giving information in a referendum campaign is given by the Referendum Act 1994 'to the two Houses of the Oireachtas and not to the Government' (ibid. 48).

The judgment of Denham J focused primarily on the equality issue. She also referred to the right to freedom of expression and the right to a democratic process. The former includes 'the corollary right that in the democratic process of free elections, public funds should not be used to fund one side of an electoral process, whether it be a referendum or a general election, to the detriment of the other side of the argument' (ibid. 53).

Egan J dissented. He concluded that the government had a right to advocate a vote in favour of the proposed amendment and

could find ‘no specific prohibition either in the Constitution itself or in the Referendum Act 1994 to prevent the sum of £500,000 being spent on the promotion of a vote in favour of the proposed amendment’ (ibid. 47).

Further development

The decisions in *Hanafin* and *Coughlan* led to further judicial consideration of the referendum process. In *Hanafin* the High Court dismissed a petition to set aside the result of the divorce referendum on the grounds that the government’s publicly funded and unconstitutional campaign in favour of a ‘yes’ vote was an irregularity that had materially affected the outcome. The case was appealed to the Supreme Court and the appeal was dismissed. The judgment of the Supreme Court in the *Hanafin* case underlined the specific character of the original *McKenna* Supreme Court judgment; in the words of the Chief Justice: ‘The constitutional impropriety on the part of the government lay in the expenditure of public funds on a campaign designed to influence the voters to vote in favour of the proposed amendment and not in advocating or campaigning for the proposed amendment’ [1996] 2 IRLM 171). The Chief Justice elaborated on his reference in the *McKenna* case to the constitutional rights of the citizens in relation to referendums, arguing that the referendum process must have regard to ‘... the constitutional rights of the citizen to participate therein and in particular must have regard to the right of the people to be informed with regard to the nature of the issue involved and its implications; the right of freedom of discussion thereon; the right of people to persuade and to be persuaded; the right of people to campaign, either individually or in association, in favour of or against the proposal ...’ (ibid. 181). Recognising this broad array of rights, the Chief Justice went on to note both a negative and a positive obligation on the Houses of the Oireachtas in relation to the referendum process, namely, ‘not only not to interfere therewith, but to respect, and so far as practicable, defend and vindicate the personal rights of the citizens involved therein’ (ibid.).

This statement lists an important set of rights that citizens have in relation to referendums and underlines the obligation of the Houses of the Oireachtas to defend and vindicate those rights, including the right to be informed and the right to be persuaded. However, it also seems to extend the non-interference injunction specifically to the Houses of the Oireachtas and not just, as in the *McKenna* case, to the executive and ‘the organs of government’ in general. A similar extended notion of non-interference is found in Denham J’s judgment in the *Hanafin* case that ‘it is necessary to ensure that the people’s position as direct decision-makers is preserved as against the power of any organ of government’ (ibid. 204).

Barrington J noted that the case raised important issues for future referendums. He then went on to identify an unresolved problem:

Politicians who think that the Constitution should be amended have the right and duty to attempt to persuade their fellow citizens to adopt the proposed amendment. It appears to me that they are entitled to do this individually, as private citizens, or collectively as members of a political party or of the government. The problem is that anything they do collectively as members of the government is likely to cost money and, almost inevitably, this will be taxpayers’ money. In *McKenna* (No.2) however, this Court decided that the government by spending funds on the one-sided professional advertising campaign designed to persuade the voters to vote for the government’s proposed amendment to the constitution had exceeded the limits of its discretion and had been unfair to those taxpayers who opposed the introduction of divorce (ibid. 210-211).

In *Coughlan v Broadcasting Complaints Commission and RTE* a key issue was the allocation by RTE of free broadcast time to political parties for uncontested partisan broadcasts in the divorce referendum of 1996. The Plaintiff argued that any allocation of free broadcast time must afford equality to each side of the

argument, namely those contending for a 'yes' vote and those contending for a 'no' vote. Carney J reviewed the issues in the light of the constitutional provisions relating to referendums and in the light of the *McKenna* judgment and concluded: 'In my view a package of uncontested or partisan broadcasts by the National Broadcasting Service weighted on one side of the argument is an interference with the referendum process of a kind contemplated by Hamilton CJ as undemocratic and is a constitutionally unfair procedure' The Supreme Court upheld the judgment on appeal. (*Coughlan v Broadcasting Complaints Commission and RTE* [2000] 3 IR 1.)

The main constitutional implications for the conduct of referendums deriving from the judicial decisions are as follows:

- the people are the exclusive decision-makers
- they are entitled to reach their decision free from unauthorised interference by the organs of the state
- the government may not spend public money to support only one side of a referendum campaign because that would be contrary to the requirement of fair procedures and is an infringement of the concept of equality
- once a referendum Bill has passed, the government, the Houses of the Oireachtas and the political parties have no special claim on public funds. If public funds are made available they must be expended equally on pro and anti campaigns
- in a referendum RTE may not allocate free broadcast time to political parties in such a way that the broadcasts are weighted in favour of one side
- politicians who think that the Constitution should be amended have the right and duty, individually or as members

of a political party or of the government, to attempt to persuade their fellow citizens to adopt the proposed amendment.

In their judgments the courts have established the constitutional limits within which the organs of state must act to ensure a democratic decision on a referendum proposal. This has necessarily cast the process in a negative light, being concerned to identify those actions the government and the other organs of state may not take. However, it is clear from most of the individual judgments that these prohibitions are countered by various permissions, in some cases encouragements or positive injunctions, to politicians, including government ministers, individually and collectively, to engage in campaigns designed to persuade the voters to vote in one way or another. This tension is evident in particular in the passage from the judgment of Barrington J quoted above and in the Chief Justice's reference to the obligation on the Houses of the Oireachtas not only not to interfere with the referendum process but to respect, defend and vindicate the personal rights of the citizens involved in that process. The courts have not clarified how these positive and negative injunctions should be balanced.

Government response

The government's immediate decision following the *McKenna* judgment was to abandon the advertising campaign, which had been the principal issue in the case. Before the *McKenna* judgment, the government had decided to establish an ad hoc commission on referendum information. The members of the commission were the Ombudsman, the Clerk of the Dáil and the Clerk of the Seanad. This commission had been charged with soliciting arguments from the public and garnering arguments from the media in order to prepare a leaflet for distribution to every household in the country, setting out a balanced set of arguments for and against the referendum proposal on divorce. Similar ad hoc commissions on referendum information were established for the bail (1996) and cabinet confidentiality (1997)

referendums, except that in both cases the task of the commission was to prepare notices, for publication in the national and local newspapers, giving arguments for and against the proposals.

Early in 1998, a pending referendum on the Amsterdam Treaty and discussion on proposals for constitutional change resulting from a Northern Ireland agreement, a referendum commission was established on a statutory basis (Referendum Act 1998).

Under the Act, the Referendum Commission has five members: as chairperson a former Supreme Court or High Court judge, or a current High Court judge, nominated by the Chief Justice, the Comptroller and Auditor General, the Ombudsman, the Clerk of the Dáil and the Clerk of the Seanad.

In the campaigns on the Amsterdam Treaty and the Northern Ireland Agreement in 1998 the Referendum Commission had a budget of £5.5 million. It mounted a major public information campaign, producing and distributing several leaflets and booklets and placing advertisements containing arguments for and against the two referendum proposals in the print and electronic media. The work of the commission was increased by two factors. First, the referendum on the Northern Ireland Agreement arrived on the desk of the Commission just as its Amsterdam campaign was beginning. Secondly, the Amsterdam Treaty was a complex document that would be difficult to present either by way of general explanation or by way of summary arguments in favour and against.

On 4 May 1999, the Referendum Commission was re-established by the Minister for the Environment and Local Government with a budget of £750,000 to promote the referendum on local government held on 11 June 1999. The commission produced an information leaflet which was distributed to various public outlets, but neither time nor funds permitted house-to-house delivery. The information in the leaflet was also presented in all newspapers. Submissions on the proposals were invited. The arguments for and against the proposal were advertised in the

newspapers in the week before the referendum. In addition, advertisements were carried on national TV and radio, alerting people to the forthcoming newspaper notices at each stage.

The Referendum Commission was re-established by the Minister for the Environment and Local Government on 17 April 2001 to promote the referendums on the Nice Treaty, the death penalty and the international criminal court. The budget for the Nice Treaty campaign was £2.5 million and for the other two campaigns £1 million each.

The Commission prepared a short booklet containing brief explanatory details on the three proposed amendments. The booklet was distributed to all those entitled to vote. The Commission published three more substantial booklets explaining in considerable detail the core elements of each of the amendment proposals. These were made available to the public through libraries, garda stations, post offices, community information centres and other public offices. Advertisements were placed in national and local newspapers and on radio and television setting out the arguments for and against the amendment proposals based on submissions which had been solicited by the Commission. The Commission also established a website.

A sufficient response?

The use of a Referendum Commission has been the response to the need to ensure that the referendum campaign is conducted in a fair way. However, it is not a full response to the needs of a referendum. It does not grapple with the issue of how the government, the Houses of the Oireachtas and the political parties should carry out their essential duties while abiding by the rulings of the courts. Following the referendum on the Nice Treaty on 7 June 2001, which was characterised by a low turnout on an important proposal which was a complex one, serious reservations were expressed about the arrangements that had evolved for the conduct of a referendum.

The needs

Under the Constitution, proposals for amendment come before the people in a form which asks them to approve or reject a Bill which has been passed by the Houses of the Oireachtas. The people exercise the power of veto. Constitutional referendum legislation therefore is passed only if the majority for it in parliament is reflected in a majority of the electorate.

The people, when they are deciding on a constitutional amendment, are in the position of a judge hearing a case. The quality of their judgment will depend on the clarity with which the facts underpinning the proposal are placed before them and the cogency of the arguments made to them by both sides. The standing of those making the arguments affects the weight many give to abstract reasoning in areas where they themselves may have little knowledge or experience. The people must be in a position to have access to all the necessary facts and to hear a debate by the champions on both sides.

As far as the facts are concerned, the people must have access to the knowledge and experience of relevant experts, whether they be in the public service or in specialised institutions.

As far as the debate is concerned – and by debate we mean a partisan campaign involving the general clash of ideas across all the media, whipped up by advertising and promotional material – the people should be able to call upon those who have championed or opposed the proposal in the Houses of the Oireachtas. These, after all, are the people who are likely to have reflected most deeply on the issues and to have consulted constituents and interest groups. However, since the referendum is concerned to test whether the majority in the Houses of the Oireachtas is reflected in the people as a whole, the people must also be in a position to call to witness groups outside the Dáil who wish to express views for or against the proposal.

Meeting the needs

There are two major phases in meeting the needs.

Section 10 Referendum Act 1994

(1) Whenever a Bill containing a proposal for the amendment of the Constitution shall have been passed or deemed to have been passed by both Houses of the Oireachtas the Minister shall by order appoint the day (in this Act referred to as “the polling day”) upon which and the period during which the poll at the referendum on such proposal shall be taken.

(2) Subject to section 11, the polling day shall be not less than thirty days and not more than ninety days after the date of the order.

(3) Every order under this section shall be published in Iris Oifigúil as soon as may be after it is made.

(4) On such a Bill being passed or deemed to have been passed by both Houses the Clerk of the Dáil shall forthwith inform the Minister accordingly.

First phase

The first phase begins when a referendum Bill is published and ends when the Bill is passed by the Oireachtas. This phase is an important one in our referendum process. It is the phase which connects our representative form of government with direct democratic consultation.

To the formation of a referendum proposal is brought all the formal processes, such as orderly procedures and professional recording, that attend the formulation of ordinary legislative proposals by the people's representatives. The purpose of the proposal is set out. The principles underlying it are examined. The practical effects of it are assessed by a group of people who can be expected to anticipate the reactions of the people and who can access expert knowledge and experience. Moreover, the process makes available expert legal advice to ensure that the proposal is expressed in legally and constitutionally apt terms.

Because the enactment of an amendment proposal depends on ultimate approval by a majority of the people and not by majorities in both Houses of the Oireachtas, it is essential that extra steps are taken to engage the attention of the people in this phase.

During this phase the support among the political parties for the referendum becomes apparent. The passage of any Bill through the Oireachtas may attract media attention and provide an opportunity for the public to understand the purpose of a Bill and the measures proposed to achieve the purpose. It also enables the public to express through the media, meetings, demonstrations, and representations to public representatives, any misgivings it may have about a Bill or aspects of it. The process is important in the case of a Bill to amend the Constitution, the fundamental law of the state. Consequently, measures should be taken to ensure that a Bill to amend the Constitution is fully debated by the Dáil. Given the importance of a constitutional amendment, every

deputy and every senator should have the opportunity to express his or her views. The Bill therefore should be debated in principle and in detail by each House. To ensure this the committee considered whether a minimum period for the Oireachtas debate should be specified in the Constitution. The committee are aware that there can be occasions when the government needs to act with great speed in relation to a proposal. Accordingly the committee does not recommend any constitutional change in this respect. However we recommend, that the Standing Orders of the Houses should be amended so as to embody a presumption that every TD and Senator will have sufficient opportunity to make whatever contribution he or she wishes to make.

Recommendation

Amend the Standing Orders of each House so as to embody a presumption that every TD and Senator will have sufficient opportunity to contribute to the debate.

Where a proposal is extensive and multi-faceted, such as that relating to the Amsterdam Treaty, or complex and contentious, such as a proposal relating to the right to life, the Houses should consider establishing an All-Party Oireachtas Committee to prepare and publish a report. This All-Party Oireachtas Committee should be in operation

- a before a Bill has been printed, where the exact terms of a proposal need to be formulated; this would provide a service such as the All-Party Oireachtas Committee on the Constitution performed in its *Fifth Progress Report: Abortion*, or
- b after a Bill has been printed and there is a need to evaluate the issues on the basis of a review of the knowledge of

experts and the presentation of the insights of groups outside the Houses.

Fostering awareness among the public at this initial stage would be of enormous benefit to the equitable promotion of information undertaken during the referendum campaign itself. Both the report of the All-Party Oireachtas Committee and the Oireachtas debate would bring into the public domain relevant knowledge and experience from the public service and other institutions.

Recommendation

Standing Orders of each of the Houses of the Oireachtas should provide for the establishment, as necessary, of an All-Party Oireachtas Committee

- a either before a Bill has been printed, where the exact terms of a proposal need to be formulated
- b or after a Bill has been printed and there is a need to evaluate the issues on the basis of a review of the knowledge of experts and the presentation of the insights of groups outside the Houses

and for the publication of its report.

Second phase

The second phase begins with the submission of the bill as passed by both Houses of the Oireachtas to the people. In the second phase a referendum campaign takes place which concludes with the direct decision of the people. The democratic verdict is best arrived at when a preponderance of those entitled to vote participate in the decision. Democrats are uneasy when a majority that registers a decision in a referendum is an actual minority of those entitled to vote. The creation of preponderant participation is seldom spontaneous. In a memorandum ‘The

involvement of the people in the referendum process' (see Appendix III), Professor Richard Sinnott says:

While political activists and commentators frequently assume that the mass of the public is just as interested in politics as they are themselves, survey evidence consistently shows that interest in politics is found, at most, among about 40 per cent of the population. Knowledge of public affairs is also more thinly spread than political elites tend to assume. While this is a somewhat neglected area of political research and much more evidence on it is needed, the point can be illustrated with reference to knowledge of European affairs across the different member states of the European Union. Based on the evidence of an eight-question scale of knowledge of European affairs that was applied in the then twelve member states of the European Community in 1993, it is clear that only about a one-third minority of European citizens had a reasonably accurate knowledge of the most basic facts about how the Community worked; 26 per cent had 'some but not much knowledge' 24 per cent 'very little knowledge' and 15 per cent virtually 'no knowledge at all'. The distribution of knowledge in the Irish case was very similar to this average European distribution.

The problem goes deeper than the problem of interest and knowledge. Professor Sinnott observes:

There is the larger question of the nature of public opinion, in particular the question of how well structured and consistent and how stable people's opinions are. This has been a major issue in political science and social psychological research for decades and the overall conclusion of this literature is that public opinion at the individual level is neither stable nor well structured. As Zaller put it, individuals tend to have 'a series of partially independent and often inconsistent' attitudes and which

attitude comes to the fore, for example in an opinion poll, depends on the context and the stimulus presented. By analogy, one can apply this point to the referendum process. The quality of the public's involvement in a referendum and, ultimately, the quality of the decision they make depends on the extent of the stimulation they receive and the extent to which the referendum process assists citizens in coming to a decision and especially in sorting out 'the partially independent and inconsistent' attitudes they hold. The implication is that a major effort at political education, political mobilisation and political persuasion is required if the involvement of the public in the referendum process is to be reasonably satisfactory.

Conclusion

It must be concluded that there is a duty on the minority who are involved in political issues, such as the political parties and the interest groups, to engage in the process of debate and persuasion that can lead to as much participation in deciding the referendum issue as possible. There is a need to develop the civic culture that will encourage such a process.

The need to facilitate the exercise of direct democracy in this way should not surprise us. The oldest direct democracy that we know of, ancient Athens, had self-consciously to develop and promote a civic culture to create high and intense levels of participation in the politics of the city-state. It also had to develop practical measures to ensure the participation of all, rich and poor, by providing payment for the performance of the duties of certain public offices.

Success in the second phase, therefore, is dependent on

- a properly supported debate on the referendum issue

- a civic culture that encourages participation in the decision.

Forming the decision

Since the task in this second phase is to ascertain whether the majority in favour of the proposal which has been found in the Houses of the Oireachtas is matched by a majority of the people as a whole, there is need for an agency other than the Houses of the Oireachtas to ensure that fairness and balance mark the processes involved in the phase.

Independent referendum commission

An independent referendum commission has been the device used in Denmark and in Ireland since 1995. The committee agrees that an independent Referendum Commission is necessary to guarantee that any state participation in a referendum campaign is balanced in an equitable manner between the two opposing sides.

Functions of the commission

The primary function of the commission, as set out in the Referendum Commission Act 1998, is to explain the subject matter of the referendum to the population at large while ensuring that the arguments of those against the proposed amendment to the Constitution and those in favour are put forward in a way that is fair to all interests concerned. The commission has powers under the Act to issue statements to the electorate, through television, radio and other electronic media. The commission may seek submissions from the public and set out the arguments for and against the referendum proposals and issue statements, having regard to any submissions received. The commission has the function of fostering and promoting and, where appropriate, facilitating debate on the referendum proposals in a manner that is fair to all interests concerned. The commission has the power to declare a body to be an approved body for the purposes of the referendum. The Act obliges the commission to report to the minister after the referendum.

A necessary change in function

Present legislation can require the Referendum Commission to

- 1 provide information about the referendum and
- 2 promote the debate.

The committee agrees that the commission should provide information but does not believe that it should have any direct responsibility for putting the arguments for and against a referendum proposal. It is understandable that such a function should have been given to the commission in response to the *McKenna* judgment. However the political needs of a referendum cannot be met by setting before the electorate two lists of arguments, all of them detached from the contexts that give them sense and weight in an effort to be evenhanded. That leads to leaden rather than lively presentation. It also leads to confusion because while the voter must arrive at a summative judgment he or she has no means of measuring the weight to be given to each of the arguments presented in this way. The engagement of the commission directly in the campaign tends to weaken the sense that the political parties and the interest groups should be the protagonists in the debate.

The referendum campaign on the Nice Treaty illustrates how reliance on a commission to create a lively debate is misplaced. A referendum campaign catches fire when political parties and interest groups hotly debate issues. Such a debate tests the arguments on either side and allows the people to weigh them up and come to a decision. As this committee observed in its *First Progress Report*:

Discussion is carried on mainly in the media and is resourced to a great extent by them in return for readers, listeners and viewers. The political parties and the interest groups also contribute promotional funds. However, each side needs to be able to reach the voter, above the welter of debate, with its salient, summative points. This involves publicity expenditure not readily available to voluntary

organisations such as political parties and other interest groups.

Recommendation

Amend the Referendum Act 1998 so as to remove from the Referendum Commission the onus of presenting the arguments for and against a referendum proposal.

Funding the campaign

Some state funding is necessary if the people are to be provided with the service of effective partisan campaigning.

Apart from publicity material and advertisements, a partisan campaign might involve public meetings, telephone canvassing, and an Internet site – all costly elements. In a contentious referendum the people need to know what the arguments are and what weight to give them. In weighing up arguments people are greatly influenced by their knowledge of who is supporting each argument and who is opposed to it. Apart from political parties, groups outside the Dáil may involve themselves in a referendum campaign. They may be national interest groups with a known membership or ad hoc groups whose membership may only be estimated and which may fluctuate in the course of a referendum campaign.

Professor Sinnott, in his memorandum (see Appendix III), gives a concrete example of the importance of the understanding and interest created by debate. In the Amsterdam Treaty referendum, 44% of the registered electorate did not turn out to vote. Almost half of those polled who had not voted (46%) gave as the reason ‘did not know or understand the issues’ (25%) or ‘not interested or could not be bothered’ (21%). In the Amsterdam Treaty referendum, 38% of those who voted voted ‘no’. More than one-third (36%) of those polled who voted ‘no’ gave as their reason ‘I didn’t have enough information’ or other similar response. The

feeling of helplessness engendered by this was exploited by the slogan of the anti-Amsterdam campaign, 'If you don't know, vote no!' See also Appendix IV.

In *The Referendum Experience* (eds Michael Gallagher and Pier Vincenzo Uleri), the position in regard to the funding of the competing sides in referendum campaigns in European countries is described as follows:

In some (France, Italy, Switzerland), no public funding is given; in others (Austria, and Ireland before the practice was ruled unconstitutional in 1995), the government uses public money for its own case only. In Denmark, Finland and Norway public money is made available to groups on both sides; in Sweden, as in the British EC Referendum in 1975, two umbrella organisations are established and receive public funding. Because private funding is still allowed as well, one side is nevertheless usually better (often much better) funded than the other. If public funding is supplied, then the model used in Denmark, Finland and Norway has the most to commend it.

The Danish model aims at equitable rather than equal allocation of the public funds. Thus for the 1998 Amsterdam Treaty the fund was divided in two. One half was used to fund promotional activities such as meetings, pamphlets or publicity by grassroots groupings. They applied to an independent committee. The other half was divided in two. One of these halves was divided equally between the political parties and the three national movements concerned with the EU (one is pro, the other two are anti). Of the other half, two-thirds was divided among the political parties in accordance with their electoral support and the remaining one-third was divided equally among the three EU movements.

In Ireland, following the *McKenna* judgment, it has been accepted that public funds must be devoted equally to the pro and anti

sides. No funds are actually given to the opposing groups. The 1998 Referendum Commission pointed out:

The view has been expressed that public debate would be encouraged if the Referendum Commission allocated funds to opposing groups to facilitate their referendum campaigns. Indeed some approaches were made to the Commission by groups seeking funds. It is clear that the Referendum Act does not envisage such an approach by the Commission and it would be a matter for the Oireachtas to decide whether or not a change would be desirable. From its experience, the Commission would see considerable difficulties in ensuring compliance with the McKenna judgment and avoiding litigation.

In view of the importance of partisan debate, the committee believes that legislation should allow funds to be made available by the commission to distribute to the groups on the opposing sides.

While the committee believes that the Referendum Commission should provide funds to promote the referendum campaign to the groups campaigning on either side there was a division of opinion on how the funds should be allocated.

The committee agrees that in order to protect the independence of the Commission in regard to partisan funding, a panel should be established for each side consisting of representatives of the groups vying for funding. Each panel would have to agree within a specific time-limit its proposals for the spending of the public funds earmarked by the commission. It would be up to each panel to decide on whether the groups it represents should concert in a single promotional programme or agree to separate promotional projects. This would provide for circumstances where two diametrically opposed groups, finding themselves agreed in their opposition to an amendment, could opt for separate funding. The bodies eligible for funding would be

approved by the commission. Appropriate arrangements for the auditing of the expenditure of funds provided by the commission would be required.

This procedure might result in the provision of large funds to groups representing very small minorities. Indeed some might organise opposition to a referendum proposal to avail themselves of funds for self-advertisement. The authors of *The Referendum Experience* observe that where the opposition to a proposal seems very weak ‘setting up an organisation to campaign for the weaker side and giving it substantial amounts of public money could be seen as not so much levelling the playing pitch as tilting it in the other direction’.

The 1998 Referendum Commission rejected these arguments. To the criticism that it gave equal weighting, especially in the context of the referendum on Northern Ireland, to arguments put forward by groups which clearly represented only a tiny minority of voters, the 1998 commission gave this response:

This criticism seems to presume that the commission should have regard to the likely outcome of the referendum and that balance should somehow relate to the numbers of the electorate likely to be in favour or against. The argument clearly does not stand up since the commission cannot anticipate the outcome of the referendum. At the heart of the argument there is the basically undemocratic premise that the views of fringe groups or individual citizens are irrelevant. The commission is required to ‘be fair to all interests concerned’ and every single elector has an interest in a referendum. The commission is concerned with maintaining balance between the ‘yes’ and ‘no’ viewpoints rather than between different groups.

The commission sees itself as fulfilling an important democratic function, in particular in reflecting minority views in the context of a referendum. Such views, in the

normal course of events, might not receive an airing but they may nonetheless merit consideration if citizens are to be given an opportunity to cast an informed vote in the knowledge that they have been exposed to all the relevant arguments.

The majority of the members of the committee who examined this problem considered that the issue of funding should be decided on the basis of what was equitable rather than what was equal. The essential need is for the citizens to be informed. In the referendum campaign the people need to be able to call before them the champions on the pro and anti sides

- 1 who are members of the Houses of the Oireachtas, which have placed the amendment proposal before them
- 2 who are outside the Houses of the Oireachtas.

To achieve this it seemed reasonable to a majority of the members of the committee to adapt the Danish model as follows:

- make available half the total funding to the parties in the Oireachtas. What the people need is a sense of the level and quality of the support for and against the proposal in the Houses of the Oireachtas, where the proposal was initiated and passed. An equitable way of meeting this need would be to give the resources to do this to all the parties in the Oireachtas in proportion to their representation
- divide the other half of the fund equally between the pro and anti groups outside the Oireachtas to allow their arguments to be presented with equal force.

A minority of the members of the committee took the view that the funds should be divided equally between the two sides as a matter of principle. It was pointed out that any uneven distribution of funds is at variance with judicial interpretation and would require a constitutional amendment.

The committee agreed that the Referendum Act should be amended to allow the Referendum Commission to dispense funds to promote the referendum campaign in a manner consistent with the *McKenna* judgment. Any funds made available should be divided equally among those in favour and those opposing a referendum proposal. The majority of the members who favoured an equitable as distinct from an equal distribution of funds do not believe in pressing their view to a referendum proposal at this stage.

Recommendation

Change the Referendum Act 1998 to allow the Referendum Commission to dispense funds to promote the referendum campaign by dividing the fund equally among the pro and anti sides.

The Referendum Commission: its revised functions

The Referendum Act should be altered to provide the Referendum Commission with the following functions:

1 promoter of participation

The commission will promote an awareness of the referendum and the desirability of as many people as possible registering their vote

2 provider of information

The commission will provide factual information on the referendum through leaflets, explanatory booklets supported by a website, information line and press office. This is a necessary underpinning for the partisan campaign which in turn is necessary for its proper exploitation. In its report the 1998 Referendum Commission adverted to the difficulties encountered by an information campaign which does not receive a charge from a partisan debate:

For instance, while there was a consistent demand for more information, more comprehensive material and more debate, the percentage of people who actually read any of the publications was disappointing. This was the case in both campaigns. In the case of the explanatory booklet on Northern Ireland, 51% claimed to have received it but only 19% read it fully. This was despite the fact that people claimed to have a high level of interest in Northern Ireland.

In relation to the question of voter apathy, as manifested in the disappointing turn-out, the reasons given for not voting were varied. There was a worrying disparity between younger and older age groups. Of those in the 18 to 24 age group, only 38% voted. Of those under the age of 40 years, 56% did not vote.

In particular, the more apathetic voter is less likely to read or make the effort to read material in publications or newspapers and may only be reached by other media. The political parties used outdoor advertising to good effect and this may be one of the few effective routes, apart from broadcast media, to reach the apathetic 18 to 30 year olds.

3 auditor of accounts

The commission will assure the Houses of the Oireachtas of the proper application of funds by ensuring that those groups which have been given funds have spent them properly. For this purpose it will issue guidelines, mirrored on existing legislation, on matters such as the appointment of an accounting agent by each group, the purposes for which payments may be made or expenses incurred, limitations of expenses and the making of claims relating to expenses. Groups which receive funding from the state shall present audited accounts to the commission which will include a list of all sums received from sources other than the commission itself which are above the limits which shall be established by the commission for each referendum.

4 funding of referendums

In the past political parties and interest groups have collected funds from private groups and individuals to promote referendum campaigns. Freedom of expression is a fundamental in any democratic system. However, full disclosure of the sources of finance raised and of the amounts of expenditure incurred should be required under the referendum legislation. Appropriate limits should be set to contributions to prevent the exercise of disproportionate influence by any one citizen. Contributions from outside the state by persons other than citizens of Ireland should be prohibited.

Recommendation

Further change the Referendum Act to provide the following functions for the Referendum Commission:

- 1 promoter of participation
- 2 provider of information
- 3 auditor of accounts
- 4 monitor of disclosure of expenditure incurred and finance raised.

In relation to the provision of information such information may include the findings of All-Party Committees.

Length of campaigns

The Referendum Act 1994 provides for a minimum of thirty days and not more than ninety days for the holding of a referendum following the passage of an amendment Bill through both Houses of the Oireachtas.

The committee were of the opinion that the lower limit of thirty days should be retained to allow the government both to cope with urgent requirements and to programme conveniently technical and non-contentious proposals. It recommends that the lower limit should not be otherwise resorted to because it is not

ordinarily adequate. Moreover its use for contentious or complex proposals might give the people the impression that they are being unduly pressed into taking a particular decision.

As far as the upper limit is concerned, the committee is of the view that with complex proposals an upper limit of one hundred and twenty rather than ninety days may on occasion be required to ensure an exhaustive public campaign. Given a crowded government legislative programme, the committee considers that the government's discretion should not be limited by prescribing unwieldy periods for the holding of referendums. A further consideration is that many people refrain from making up their minds until the actual date of a referendum presses upon them. The provision of a long period may simply make for a long fallow period.

The committee considers that the limits it proposes provide for the selection of a period suited both to each kind of amendment that might be proposed and the circumstances in which it arises.

Recommendation

Amend the referendum legislation as follows:

A period of not less than thirty or more than one hundred and twenty days from the passage of a Bill to amend the Constitution through the Houses of the Oireachtas shall be allowed for the discussion of the proposal by the people and their decision upon it.

The lower limit should not be specified unless the proposed amendment arises from an urgent requirement or relates to a technical or non-contentious matter.

Different kinds of constitutional referendums

In its analysis the committee has been concerned with the needs of complex or contentious referendums. However, it should be noted that the needs of a referendum are not the same in all cases. Broadly speaking, referendums can be divided into two categories:

1 substantive amendments

Substantive amendments are those which make changes in the substance of the text of the Constitution. They can vary greatly. They may be non-contentious. Thus among the referendums that have been conducted to date, the change of voting age (1972), the removal of the special position of the Roman Catholic Church (1972), adoption (1979), power to alter by legislation the electorate for Seanad University seats (1979) and the Belfast Agreement (1998), were non-contentious. It should be noted however, that in the matter of constitutional amendment, it is impossible to be definitive in advance of a referendum as to what is or is not contentious. Substantive amendments may of course be very contentious. In the past, the referendums on divorce and the right to life were such.

In regard to substantive referendums what must be arranged is an adequate information campaign and an adequate partisan campaign.

2 technical amendments

Technical amendments might be described as those which involve changes in form but not in substance. Some may arise from the outdated of certain provisions. Thus Article 31.2.ii provides that the Council of State shall consist of, among other categories, every person able and willing to act as a member of the Council of State who shall have held ‘... the office of President of the Executive Council of Saorstát Éireann’. This provision is outdated by reason of the fact that no such person now exists. The deletion of that phrase would require an amendment that could be described as technical. Equally, the proposal of the O’Keeffe committee to gender-proof the Constitution, that is to

say to insert 'he or she', 'his or her' references where the use of the masculine in the text of the Constitution clearly refers to persons of both genders, is a technical amendment.

In the case of technical amendments, the people require a clear, straightforward explanation of the technical change. By definition no set of arguments for or against is necessary. Hence no adversarial process is necessary.

Summary of recommendations and conclusions

Meeting the needs (pages 19 – 24)

Recommendation

Amend the Standing Orders of each House so as to embody a presumption that every TD and Senator will have sufficient opportunity to contribute to the debate.

Recommendation

Standing Orders of each of the Houses of the Oireachtas should provide for the establishment, as necessary, of an All-Party Oireachtas Committee

- a either before a Bill has been printed, where the exact terms of a proposal need to be formulated
- b or after a Bill has been printed and there is a need to evaluate the issues on the basis of a review of the knowledge of experts and the presentation of the insights of groups outside the Houses

and for the publication of its report.

Conclusion

It must be concluded that there is a duty on the minority who are involved in political issues, such as the political parties and the interest groups, to engage in the process of debate and persuasion that can lead to as much participation in deciding the referendum issue as possible. There is a need to develop the civic culture that will encourage such a process.

Independent referendum commission (pages 24 – 26)

Recommendation

Amend the Referendum Act 1998 so as to remove from the Referendum Commission the onus of presenting the arguments for and against a referendum proposal.

Funding the campaign (pages 26 – 31)

Recommendation

Change the Referendum Act 1998 to allow the Referendum Commission to dispense funds to promote the referendum campaign by dividing the fund equally among the pro and anti sides.

The Referendum Commission: its revised functions (pages 31 – 33)

Recommendation

Further change the Referendum Act to provide the following functions for the Referendum Commission:

- 1 promoter of participation
- 2 provider of information
- 3 auditor of accounts
- 4 monitor of disclosure of expenditure incurred and finance raised.

In relation to the provision of information such information may include the findings of All-Party Committees.

Length of campaigns (pages 33 – 34)

Recommendation

Amend the referendum legislation as follows:

A period of not less than thirty or more than one hundred and twenty days from the passage of a Bill to amend the Constitution through the Houses of the Oireachtas shall be allowed for the discussion of the proposal by the people and their decision upon it.

The lower limit should not be specified unless the proposed amendment arises from an urgent requirement or relates to a technical or non-contentious matter.

Appendices

Appendix I: Statistics on referendums

	Total Electorate	% Poll	Yes	No
Plebiscite on the Draft Constitution, 1937 – 1 July 1937	1,775,055	75.8%	56.5%	43.5%
Third Amendment of the Constitution Bill, 1958 (The Voting System) – 17 June 1959	1,678,450	58.4%	48.2%	51.8%
Third Amendment of the Constitution Bill, 1968 (Formation of Dáil Constituencies) – 16 October 1968	1,717,389	65.8%	39.2%	60.8%
Fourth Amendment of the Constitution Bill, 1968 (the Voting System) – 16 October 1968	1,717,389	65.8%	39.2%	60.8%
Third Amendment of the Constitution Bill, 1971 (Accession to the European Communities) – 10 May 1972	1,783,604	70.9%	83.1%	18.5%
Fourth Amendment of the Constitution Bill, 1972 (The Voting Age) – 7 December 1972	1,783,604	50.7%	84.6%	15.4%
Fifth Amendment of the Constitution Bill, 1972 (Recognition of Specified Religions) – 7 December 1972	1,783,604	50.7%	84.4%	15.6%
Sixth Amendment of the Constitution (Adoption) Bill, 1978 (Adoption) – 5 July 1979	2,179,466	28.6%	99.0%	1.0%
Seventh Amendment of the Constitution (Election of Members of Seanad Éireann by Institutions of Higher Education) Bill, 1979 – 5 July 1979	2,179,466	28.6%	92.4%	7.6%
Eighth Amendment of the Constitution Bill, 1982 (The Right to Life of the Unborn) – 7 September 1983	2,358,651	53.7%	66.9%	33.1%
Ninth Amendment of the Constitution Bill, 1984 (Extension of the Voting Right at Dáil Elections) – 14 June 1984	2,399,257	47.5%	75.4%	24.6%
Tenth Amendment of the Constitution Bill, 1986 (Dissolution of Marriage) – 26 June 1986	2,436,836	60.8%	36.5%	63.5%
Tenth Amendment of the Constitution Bill, 1987 (Ratification of Single European Act) – 24 May 1987	2,461,790	44.1%	69.9%	30.1%
Eleventh Amendment of the Constitution Bill, 1992 (European Union) – 18 June 1992	2,542,840	57.3%	69.1%	30.9%
Twelfth Amendment of the Constitution Bill, 1992 (Right to Life) – 25 November 1992	2,542,841	68.2%	34.65%	65.4%

	Total Electorate	% Poll	Yes	No
Thirteenth Amendment of the Constitution Bill, 1992 (Travel) – 25 November 1992	2,542,841	68.2%	62.4%	37.6%
Fourteenth Amendment of the Constitution Bill, 1992 (Information) – 25 November 1992	2,542,841	68.1%	59.9%	40.1%
Fifteenth Amendment of the Constitution (No 2) Bill, 1995 (Dissolution of Marriage) – 24 November 1995	2,628,834	62.15%	50.3%	49.6%
Sixteenth Amendment of the Constitution Bill, 1996 (Right to Bail) – 28 November 1996	2,659,895	29.23%	74.8%	25.1%
Seventeenth Amendment of the Constitution Bill, 1997 (Cabinet Confidentiality) – 30 October 1997	2,688,316	47.17%	52.7%	47.3%
Eighteenth Amendment of the Constitution Bill, 1998 (Amsterdam Treaty) – 22 May 1998	2,747,088	56.2%	61.7%	38.3%
Nineteenth Amendment of the Constitution Bill, 1998 (Belfast Agreement) – 22 May 1998	2,747,088	56.2%	94.4%	5.6%
Twentieth Amendment of the Constitution Bill, 1999 (Local Government) – 11 June 1999	2,791,409	51.08%	77.8%	22.2%
Twenty-First Amendment of the Constitution Bill, 2001 (Death Penalty) – 7 June 2001	2,867,960	34.8%	62%	38%
Twenty-Third Amendment of the Constitution Bill, 2001 (International Criminal Court) – 7 June 2001	2,867,960	34.8%	64%	36%
Twenty-Fourth Amendment of the Constitution Bill, 2001 (Nice Treaty) – 7 June 2001	2,867,960	34.8%	46.13%	53.87%

Appendix II

Amendment of the Constitution and the Referendum*

Introduction

Amendment of the Constitution, whether by way of variation, addition, or repeal, may be effected in the manner provided by Article 46.

Reference to the people for a decision is not the only, nor even the most common, method adopted by states to amend their basic law. In Ireland the referendum has been provided for in both the previous and the present Constitution and is valued by the people because it gives them a direct input into amendment of the Constitution.

Issues

1 whether some provisions of the Constitution are so fundamental that they should not be open to amendment

For historical reasons, some continental constitutions have Articles which are declared to be immutable. Examples are the free democratic nature of the state in the German constitution and the republican status of the state in the Italian constitution. Moreover, some people propose that there are primal laws, such as the natural law, whose pervasive, formative influence must be recognised by, and reflected in, all man-made law and whose principles cannot be modified – and that therefore they and their eternal, transcendent character should be asserted in the Constitution. Others propose that some of the more fundamental human rights provisions should be put beyond the reach of constitutional amendment.

The Review Group considers that the right which one generation gives itself to write, amend, or replace a constitution can be reasonably and readily claimed by another. Furthermore, while ideas may be eternal and perfect, the form in which they are expressed cannot be, and it is futile to seek to endow any form of words with an immutable character.

Recommendation

There should be no provisions of the Constitution which are not open to amendment.

* Reprinted from *Report of the Constitution Review Group*, 1966, pp 397-405

2 whether provisions ensuring minority rights should be exempt from amendment

There are no minority rights as such in the Constitution, but protection for minorities is available through those provided for individuals. The arguments and recommendations at 1 above apply equally here.

3 whether a qualified majority in a referendum should be required to amend certain provisions of the Constitution

Democracy works on the basis of a decision by the majority. In a referendum under the Constitution a proposal for amendment is submitted for a 'yes' or 'no' answer and a simple majority is required, that is, the proposal is carried if a majority of the valid votes cast favours a 'yes' answer. The Review Group considered whether proposals for amendment of certain provisions of the Constitution should be carried only if they achieve a qualified majority, that is, not only most of the votes cast, but also a specified proportion of them (for example, sixty-six per cent).

A qualified majority has a superficial attraction, for example, for the protection of fundamental rights. But it is an unfair provision because it allows to be enshrined by a simple majority what could be removed only by a qualified majority. Moreover, the use of a qualified majority would make it extremely difficult to remove provisions that might, with the efflux of time, be seen to operate against the best interests of the people. In any event, experience shows that those who wish to change the Constitution find it difficult to muster any majority. The Review Group considers that qualified majorities should not be required for any changes in the Constitution.

4 whether amendments to the Constitution (i) of a purely stylistic or technical nature not involving a change of substance or (ii) involving minor or insignificant changes of substance, should be made by a mechanism not involving a referendum

The Review Group agreed that the procedure for amendment provided in Article 46 sections 2 to 5 (passage of a Bill by both Houses of the Oireachtas followed by reference to the people in a referendum) was appropriate in the case of proposals for amendments other than those at (i) and (ii) above. However, it thought it desirable to consider the current procedure in the case of (i) and (ii).

Examples of an amendment of a purely stylistic or technical nature not involving a change of substance would be modernisation of the Irish spelling in the Constitution or the removal of the reference to the President of the Executive Council of Saorstát Éireann (Article 31.2.ii). An example of a minor or insignificant change of substance would be the correction of the description of elections for the President by the deletion of the

words ‘and on the system of proportional representation’ from Article 12.2.3°.

Arguments for change

- 1 the lengthy and expensive procedure of Article 46 is excessive for some amendments whose significance is not such as to merit submission for the verdict of the people
- 2 it is clear that some such amendments, although desirable, have not been attempted because of the cumbersome procedures required, and this is likely to be a recurring feature
- 3 an alternative mechanism can be devised for such amendments with sufficient safeguards to ensure that such an alternative could not be abused in such a way as to allow the undertaking of amendments of greater significance. Safeguards might include (a) a requirement that the nature of the proposed amendment be certified by a constitutional officer(s) and/or (b) a requirement that the amendment be passed by a qualified majority in the Dáil/both Houses of the Oireachtas.

Arguments against

- 1 because the Constitution was adopted by the people, its amendment is also a matter for decision by the people
- 2 any substantive amendment, even of minor significance, is a matter for decision by the people
- 3 there is a difficulty in defining objectively what is a minor or insignificant change of substance
- 4 even an amendment which is apparently of a purely stylistic or technical nature might be interpreted subsequently as having substantive effect
- 5 it would not be possible to establish watertight safeguards against abuse or error. The certification requirement mentioned would inappropriately vest in a select group special powers of control over constitutional amendments. A qualified majority requirement would not necessarily guarantee the exclusion of amendments which did not properly fall into the (i) or (ii) categories.

Recommendation

A majority of the Review Group does not favour the addition of a new provision which would permit by Act of the Oireachtas amendments of a purely stylistic and technical nature. It concluded that stylistic and technical amendments should be submitted collectively to the people by referendum at intervals, as convenient, and that the first such submission might comprise

those stylistic and technical amendments identified as desirable in the course of the current review. The same view is taken of amendments involving minor or insignificant changes of substance.

5 whether there should be a provision prohibiting the submission of a Bill containing a number of proposals for amendments which have different substantive effects for decision by the people in a referendum by means of a single vote

The Review Group noted that such a prohibition, if adopted, should apply only to a package of amendments aimed at achieving different substantive changes but subject collectively to only one vote and not to either more than one proposal for amendment with separate votes or a package of interconnected amendments aimed collectively at achieving a cohesive substantive change. In the absence of such a provision a voter might be faced unfairly with having to vote either for both of two disparate amendments tied together in a single bill, or against both of these, in a situation in which he or she favours one amendment but opposes the other.

Conclusion

The Review Group considered that the good sense of the Houses of the Oireachtas could be relied upon to use the Article 46.4 provision in a manner which respects the voters' right of choice. It did not consider it necessary to provide for such prohibition.

6 whether provision should be made for a popular initiative to amend the Constitution otherwise than by the existing provisions of Articles 46 and 47

The Constitution may be amended only in accordance with Articles 46 and 47. These do not provide for a popular initiative. The Constitution of the Irish Free State (Article 48) provided for a popular initiative both for amendment of the Constitution and for enactment of non-constitutional legislation. For a history of this provision and commentary on it see Appendix 28.*

The Review Group considered whether it is either desirable or necessary to recommend a change to provide for a popular initiative for amendment of the Constitution.

Arguments for

- 1 the initiative enables the people to propose constitutional amendments directly as well as through elected representatives, a facility that should be available in a democracy

* *Report of the Constitution Review Group*, pp 646-648

- 2 the initiative has proved to be a practicable and popular method of effecting changes, particularly in some states of the United States
- 3 it enables a section of the people to submit to a referendum a proposal for amendment on a matter on which it feels the Houses of the Oireachtas are not responsive to its concerns; where a minority perceives that its concerns are not receiving adequate attention it may resort to undesirable action to secure that attention.

Arguments against

- 1 the by-passing of the Houses of the Oireachtas, comprising the elected representatives of all the people, in submitting a proposal for amendment is inappropriate to a representative democracy
- 2 there is no indication that people perceive the existing provisions for amendment to be inadequate
- 3 the initiative tends to favour the objectives of well-organised and well-funded pressure groups who have a disproportionate capacity to mobilise both proposers and voters for an amendment
- 4 the initiative carries the risk of enabling majoritarian concerns to be incorporated into the Constitution at the expense of minorities
- 5 as compared with a proposal for amendment emanating from the Houses of the Oireachtas one that arises from an initiative has several disadvantages, for example:
 - i) it lacks the quality of deliberation which the elected representatives could bring to bear upon it and is therefore less likely to command a majority
 - ii) it lacks the benefit of the assistance provided by Government services in the analysis of issues and the refinement of proposals
 - iii) the amendment proposal may lack the precise drafting required to ensure both that it is clear to the voter and that it achieves the objective of the initiative
- 6 a heavy administrative burden would be imposed by the need to check the authenticity of the proposers of the initiative because a substantial number would presumably be required.

The initiative therefore involves the dual risks of effecting inadequate or undesirable amendments to the Constitution and of leading to many fruitless and expensive referendums.

Conclusion

The consensus in the Review Group is that there should be no provision to allow constitutional change to be proposed either directly or indirectly by means of an initiative.

7 whether provision should be made for amendment of the Constitution by way of a preferendum instead of/as well as a referendum

A preferendum differs from a referendum in that the voter is given a choice between three or more proposals (including a 'no change' choice) rather than a choice between supporting or opposing a single proposal.

Preferendums have been used in some of the states of the United States of America. A preferendum was also used in Newfoundland in 1951 to determine whether or not that state should (among other options) join the Canadian federation.

In Ireland, there have been occasions when the complexity of the issue put to the people admitted of more than one appropriate response. This point might be illustrated by the 1992 referendum on the 12th Amendment of the Constitution Bill 1992 dealing with the 'substantive issue' of abortion in the wake of the Supreme Court's decision in *Attorney General v X* [1992] 1 IR 1. In that referendum the electorate were asked to amend Article 40.3.3° of the Constitution by inserting the following clause:

It shall be unlawful to terminate the life of the unborn unless such termination is necessary to save the life, as distinct from the health, of the mother where there is an illness or disorder of the mother giving rise to a real and substantial risk to her life, not being a risk of self-destruction.

It is plain that there was a substantial body of opinion which was unhappy with the proposal on the basis that it did not offer the electorate a 'real' choice in that it did not offer the possibility of voting to insert a complete and absolute ban on abortion in the Constitution. There were, then, at least four separate possibilities:

- a) insert a complete and absolute ban on abortion into the Constitution
- b) modify the decision in the *X* case by allowing abortion where the life of the mother was at risk in all cases other than suicide
- c) accept the decision in the *X* case
- d) admit of abortion in cases where the life or health of the mother was substantially put at risk by the continuation of the pregnancy.

An illustration of how voting in a referendum might work is contained in a memorandum prepared by Gerard Hogan (see Appendix 27).*

Argument for

It would give the voter a wide range of choices within which to express his or her preferences. At the moment the referendum system offers the voter a ‘yes’ or ‘no’ option on complex issues which may not admit of a simple yes or no. The voter should therefore be offered the option of voting on a reasonable range of the possible responses such complex issues evoke.

Arguments against

- 1 the referendum system offers the voter the right to say ‘Yes’ or ‘No’ to an option formulated by the Oireachtas. It is the task of the Oireachtas to draft the precise wording of the Bill to amend the Constitution which is put before the people and the Oireachtas may be relied upon to define the precise issue for the referendum
- 2 at a referendum there is a majority one way or the other on the issue before the people. A referendum might result in an option, which had never obtained the support of a majority of the electorate, being nonetheless adopted following the vote
- 3 with referendums on complex issues, it is often necessary to formulate the proposal in a particular way so that the electorate can vote ‘Yes’ or ‘No’. Referendums introduce more complexity and the possibility of confusion
- 4 the referendum system has worked well in practice and does not require change
- 5 it is not clear who would formulate the range of proposals to be put to the electorate and how they would be so formulated
- 6 because there are three or more proposals, the terms in which each is formulated could be used to manipulate or distort the choices to be made, by, for instance, splitting a proposal supported by a majority into a number of proposals and leaving a proposal supported by a minority intact and therefore predominant.

Conclusion

The referendum system has worked well in practice and should not be changed. While the Review Group agrees that a cogent theoretical argument could be made in favour of the referendum system, it believes there is no pressing need for change. However, it is an issue which might usefully be kept under

* *Report of the Constitution Review Group*, pp 639-645

review, especially having regard to the potentially complex nature of future proposals to amend the Constitution.

8 whether the Constitution should be amended to provide that a Bill to amend the Constitution must be submitted to a referendum within a specified period after its passage by both Houses of the Oireachtas

Article 47.4 provides that, subject to the constitutional provision, the referendum shall be regulated by law. Under the Referendum Act 1994, the Minister for the Environment is required to set a date for the referendum within a specified period after the relevant Bill has been passed by both Houses of Oireachtas: see s 10. The Act also directs that, if an election is called before that date, the referendum will be held on the same day as the general election: see s 11.

Recommendation

The Review Group feels that since the system is operating satisfactorily no constitutional provision is required.

9 whether there should be an amendment to permit State funding of support for a proposal for an amendment

Exchequer funding to promote, and to seek to secure the passage of, proposed amendments to the Constitution occurred in relation to a number of amendments which were accepted by the people. These included the 1972 amendment to authorise entry into the EEC and subsequent amendments approving ratification of the Single European Act and the Maastricht Treaty. Public funding was also used in 1992 to support the series of referendums concerning Article 40.3.3^o, relating to the rights to life, travel and information. Recently, the question of public funding in relation to a referendum became a matter of controversy resulting in litigation. The use of public funding was initially upheld by a decision of the High Court in *McKenna v An Taoiseach (No 1)* [1995] 2 IR 1 and (it seems) also by the Supreme Court in the case of *Slattery v An Taoiseach* [1993] 1 IR 286. However, in *McKenna v An Taoiseach (No 2)* [1995] 2 IR 10 it was ruled that the provision and use of such funding in order to seek to secure the passage of the divorce amendment was unconstitutional. This decision was handed down a week prior to the referendum taking place and gave rise to a petition to the court seeking to overturn the result of the referendum.

The Review Group has considered whether the Constitution should authorise the use of such public funding and, if so, in what circumstances.

A possible approach would be to extend Article 47.4 (which reads, ‘Subject as aforesaid, the Referendum shall be regulated by law’) on the following lines:

Such law may provide for limited public funding in relation to any proposed amendment and shall entrust the equitable distribution of such funding to an independent body.

Arguments for

- 1 it appears unreasonable that a Government with a programme of constitutional reform approved by the Oireachtas may not spend public money in order to promote that reform
- 2 a political party may campaign and be elected on the basis of advocating constitutional change either generally or specifically and may form a Government on this basis. The position following the *McKenna* case appears to be an unreasonable hindrance to the fulfilment of democratic objectives already sanctioned by the people
- 3 apart from any constitutional reform resulting from the current review, circumstances now unforeseen or some interpretation of existing provisions of the Constitution may create a popular demand for constitutional amendment and it would be unreasonable that the Government could not expend public monies, voted by Dáil Éireann, in seeking to secure such changes
- 4 on one view of the logic of the *McKenna* case, namely, that the public should not have their money spent in an effort to persuade them against their will in relation to the merits of any particular proposal, the result might be to impede any meaningful discussion of a constitutional amendment in so far as it was publicly funded, either directly or indirectly.

Arguments against

the arguments against the proposal were fully canvassed in the *McKenna* case and are set out in the majority judgments of the Supreme Court. They need not be reproduced in full here. They include respect for the equality of the voting power of the citizens, the right not to be forced to finance the enactment of views contrary to one's own wishes, fairness of procedure, equality of treatment, respect for the democratic rights of citizens, the alleged lack of any Government role in ensuring the passage of the amendment proposed.

Recommendation

There ought not to be a constitutional barrier to the public funding of a referendum campaign *provided* that the manner of equitable allotment of such funding is entrusted to an independent body such as the proposed Constituency Commission. The total sum to be allotted should be subject to legislative regulation. Article 47.4 should be amended accordingly. Such a constitutional safeguard meets the principal objection to the old funding arrangements identified in the *McKenna* case by ensuring that the

Government does not spend public money in a self-interested and unregulated fashion in favour of one side only, thereby distorting the political process.

Since an extension of the logic of the *McKenna* judgment could possibly render unconstitutional proposals to fund political parties from the public purse, the constitutionality of public funding for political parties may also need to be similarly addressed.

Appendix III

The involvement of the people in the referendum process^{*}

Richard Sinnott

The 1998 Referendum Commission had a substantial budget and it mounted a major public information campaign, producing and distributing several leaflets and booklets and placing advertisements containing arguments for and against the two referendum proposals in the print and electronic media. The task of the commission was made more difficult by two factors. First, it had to cope with two referendums in one (the referendum on the Northern Ireland Agreement landed on the commission's desk just as its Amsterdam campaign effort was getting off the ground). Secondly, the Amsterdam Treaty was an extremely complex document that, in any circumstances, would be difficult to present either by way of general explanation or by way of summary arguments in favour and against. The details of the work of the commission and of the materials it produced are contained in the commission's report and, accordingly, need not be dealt with here. This memorandum will, however, examine the available evidence regarding the impact the commission's efforts had on the public.

Turnout

Despite the historical significance of the referendum on the Northern Ireland Agreement and the substantive importance of the issues at stake in the Amsterdam Treaty referendum, only 56 per cent of the registered electorate turned out to vote in the two referendums held on 22 May 1998. This is substantially below turnout in general elections (which itself has been declining since the early 1980s). It is also lower than turnout in many of the other major referendums of recent decades; it is lower, for example, than turnout in the two 1968 referendums on the electoral system (by 10 percentage points); it is lower by 15 percentage points than turnout in the 1972 referendum on EEC entry; it is 4 percentage points lower than the 1986 referendum on divorce and a shade lower than turnout in the Maastricht Treaty referendum in 1992. It is evident historically that turnout in several kinds of electoral contests in Ireland is quite problematic. Thus, turnout in the two European Parliament elections that have not been accompanied by either local or national elections has been in the mid-forties and the turnouts at the recent referendums on bail and cabinet confidentiality were 29 and 46 per cent respectively, despite the fact that the latter referendum was held on the same day as a presidential election.

^{*} Extract from 'The Conduct of the Referendum in Ireland: Reconciling the Political and Constitutional Requirements', paper prepared for the All-Party Oireachtas Committee on the Constitution, October 1998

One can also ask what would turnout have been in the most recent referendum if the Northern Ireland Agreement had not been on the agenda and the vote had been confined to deciding on the Amsterdam Treaty. While this hypothetical question cannot be answered definitively, some light can be thrown on the matter by the response to a question asked in a special post-referendum opinion poll carried out by Lansdowne Market Research on behalf of the EC Commission Office and the All-Party Oireachtas Committee on the Constitution*. Respondents who reported that they had voted were asked: 'Did you turn out to vote...

... mainly because of the referendum on the Northern Ireland Agreement?

... mainly because of the referendum on the Amsterdam Treaty?

... because of both equally?

Forty per cent said they voted mainly because of the referendum on the Northern Ireland Agreement, 5 per cent mainly because of the referendum on the Amsterdam Treaty and 47 per cent because of both equally (8 per cent were unable to recall which issue had prompted them to turn out to vote). This suggests that only a little over half of the 56 per cent who did vote would have been fairly certain to have voted in a stand-alone Amsterdam Treaty referendum. If one were to assume that perhaps half of those who said they turned out to vote mainly because of the Northern Ireland referendum would in fact also have turned out to vote on the Amsterdam issue, one would arrive at an estimate of turnout in the low forties for a stand-alone Amsterdam Treaty referendum. The credibility of this estimate is reinforced by the fact that it is of the same order of magnitude as turnout in the Single European Act referendum in 1987 and in stand-alone European Parliament elections. While this conclusion may perhaps confirm the wisdom of the decision to combine the referendum on the Amsterdam Treaty with the referendum on the Northern Ireland Agreement, it also confirms the seriousness of the problem of motivating voters to participate in an important decision-making function that, as noted by the Supreme Court, belongs to them and to them alone. Finding an appropriate policy for dealing with this problem requires an examination of the factors that affect voter participation in referendums.

* This opinion poll is referred to from here on as the EC Commission/All-Party Committee/Lansdowne poll. Fieldwork was carried out between 30 July and 10 August 1998 with a sample of 1,458. This paper also draws on the RTE-Prime Time/Lansdowne exit poll carried out on the day of the referendum itself and on opinion poll research carried out during and after the referendum campaign on behalf of the Referendum Commission. The author and the All-Party Committee are grateful to the Dublin Office of the EC Commission, to RTE and to the Referendum Commission for access to the data in question

Knowledge, understanding, turnout and voting decision

It is not possible, within the compass of this memorandum, to provide a comprehensive explanation either of turnout or of the decisions made by voters in the Amsterdam referendum. Much can be learned, however, from the voters' subjective explanations of their own behaviour. The term 'subjective explanations' is used to describe responses given by interviewees in an opinion poll to questions about why they did not vote or why they voted this way or that way in an election or referendum. Such subjective accounts do not provide complete explanations of the behaviour in question – voters may leave many 'reasons' out in answering the question; they may not even be conscious of all the factors that led them to act in the way they did. Nonetheless these subjective accounts are a very useful starting-point for understanding the behaviour or non-behaviour involved.

Table 1 presents non-voters' reasons for abstaining as revealed by the EC Commission/All Party/Lansdowne survey. The two most prevalent reasons are not understanding the issues and lack of interest (25 per cent gave as their reason for not voting that they 'did not know or understand the issues' and 21 per cent referred to the fact that they were 'not interested or could not be bothered'). The remaining reasons in Table 1 are of a different order: they are 'circumstantial' reasons that prevented electors who would otherwise have voted from participating. Some of these circumstances are fairly fixed quantities (e.g. illness or other indisposition); others could be mitigated by improved practical arrangements for the conduct of referendums. Leaving these aside, however, the voluntary reasons that respondents gave for abstention (lack of understanding and lack of interest) are clearly the most important in the present context; the prevalence of such reasons must be taken into account in deciding how referendums should be conducted.

Table 1: reasons for not voting in the referendum on the Amsterdam Treaty (%)

Did not know/understand	25
Not interested/couldn't be bothered	21
Away from home at time	16
Not registered	14
Ill/unable to get to vote	9
Too busy	8
Working, so did not get to polling station	5
No voting card	5
N	897

Source: EC Commission/All Party Committee/Lansdowne Market Research Poll, 1998

Questions Wording: Q1: As you know, on 22 May last, a referendum was held on the Amsterdam Treaty of European Union. For some reason or another, some people did not vote. Did you vote in that referendum? Q2: **If did not vote**, Why did you not vote in the referendum on the Amsterdam Treaty? **Probe fully. Record Verbatim.** What other reasons? Anything else?

If lack of interest and lack of understanding account for almost half of the abstention in the 1998 referendums, lack of understanding also affected the behaviour of those who did turn out to vote. This is apparent first from the RTE-Prime Time/Lansdowne exit poll conducted on the day of the referendum which asked those who voted ‘no’ in the Amsterdam Treaty referendum why they had voted in this way. More than one third (36 per cent) of all ‘no’ voters gave as their reason ‘I didn’t have enough information’ or other similar response. This proportion is confirmed by responses to a question in the EC Commission/All Party Committee/Lansdowne survey conducted after the referendum. Both yes and no voters were asked an open-ended question on the main issues that had influenced their vote and, as Table 2 shows, 38 per cent gave ‘did not have enough information/did not understand it’ as the reason for their decision. The similarity of the evidence from these two different sources is striking: a proportion between one third and two fifths of the no-to-Amsterdam vote originated in a feeling of helplessness among voters that this was something they did not understand and in the maxim, adopted as a slogan by the anti-Amsterdam campaign, ‘If you don’t know, vote no!’ While this was undoubtedly an effective campaign slogan, it is an unsatisfactory basis for participation by the people in decisions on changing the Constitution.

Table 2: most important issues influencing decision to vote against the Amsterdam Treaty (%)

Did not get enough information/did not understand it	38
Europe has too much power	26
Neutrality	14
Bad for country generally	14
Other	5
Don’t know/no reason/can’t remember	5
N	351

Source: EC Commission /All Party Committee/Lansdowne Market Research Poll, 1998

Question Wording: What were the most important issues which influenced your decision to vote in favour/against (as appropriate) the Amsterdam Treaty? **Probe Fully** What other issues? Anything else?

Other data from the EC Commission/All-Party Committee/Lansdowne survey indicate that a sense of dissatisfaction with their own understanding of the Amsterdam Treaty was quite prevalent in the electorate as a whole, especially among non-voters, but also even among those who voted. Thus, as Table 3 shows, the electorate as a whole was divided 50-50 into those who felt that they at least understood ‘some of the issues but not all that was involved’ and those who were, at best, ‘only vaguely aware of the issues involved’. The sense of knowing or not knowing what was going on was closely related to turnout: 60 per cent of those who voted felt that, at least, they understood some of the issues; this was the case among only 21 per cent of non-voters; two in every five non-voters (43 per cent) said they did not know anything at all about the Treaty (see Table 3).

Table 3: understanding of the Amsterdam Treaty among voters and abstainers

	Voted %	Did not %	All %
I had a good understanding of what the Treaty was all about	16	3	13
I understood some of the issues but not all that was involved	44	18	38
I was only vaguely aware of the issues involved	28	36	30
I did not know what the Treaty was about at all	12	43	19
N	1,696	463	2,159

Source: EC Commission/All Party Committee/Lansdowne Market Research Poll, 1998

Questions Wording: Q1 (see table 1) and Q6: By the date of the referendum (22 May), how good was your understanding of the issues involved? Please use this card to choose the most appropriate phrase.

As well as affecting turnout and abstention, the sense that one did not know at all what the Treaty was about also affected the voting decision of those who turned out to vote. As Table 4 shows, ‘no’ voting was quite limited (about one-in-five) among those on the first three points on the scale of sense of understanding of the Treaty, the ‘no’ voting remained quite limited even among those who were only vaguely aware of the issues involved. However, among those who said they knew nothing about the Treaty, the rate of voting ‘no’ more than doubled, to 46 per cent. This confirms the evidence presented earlier that lack of knowledge and lack of understanding significantly boosted the negative response to the Amsterdam Treaty in the referendum.

Table 4: voted for or against the Amsterdam Treaty by level of understanding

How voted in the referendum	I had a good understanding of what the Treaty was all about	I understood some of the issues but not all that was involved	I was only vaguely aware of the issues involved	I did not know what the Treaty was about at all
	%	%	%	%
In favour of	78	79	78	54
Against	22	21	22	46
N	239	676	392	153

Source: EC Commission/All Party Committee/Lansdowne Market Research Poll, 1998

Question Wording: Q3: How did you vote in the referendum – in favour or against the Amsterdam Treaty? And Q6 (See table 3)

Knowledge of public affairs and the nature of public opinion

The problem of knowledge is not confined to this particular referendum or to the arcane aspects of the Treaty of Amsterdam. There is a general problem of low levels of interest in and knowledge about public affairs and the implications of these levels must be taken into account in considering the role of public opinion in a democracy and in particular in a democracy with a constitutional requirement to hold referendums on all proposals for constitutional change.

While political activists and commentators frequently assume that the mass of the public is just as interested in politics as they are themselves, survey evidence consistently shows that interest in politics is found, at most, among about 40 per cent of the population. Knowledge of public affairs is also more thinly spread than political elites tend to assume. While this is a somewhat neglected area of political research and much more evidence on it is needed, the point can be illustrated with reference to knowledge of European affairs across the different member states of the European Union. Based on the evidence of an eight-question scale of knowledge of European affairs that was applied in the twelve member states of the European Community in 1993, it is clear that only about a one-third minority of European citizens had a reasonably accurate knowledge of the most basic facts about how the Community worked; 26 per cent had ‘some but not much knowledge’ 24 per cent ‘very little knowledge’ and 15 per cent ‘no knowledge at all’. The distribution of knowledge in the Irish case was very similar to this average European distribution.

These widespread low levels of knowledge affect the political decisions people make. This can be seen by examining the effect of different levels of knowledge on the voting intention of Irish voters in a hypothetical second referendum on the Maastricht Treaty. In 1993, support for the Maastricht Treaty in a hypothetical referendum varied from 41 per cent among those with little or no knowledge to 78 per cent among those with a high level of knowledge. These variations in support for Maastricht were reflected in the level of uncertainty among voters rather than in outright opposition: uncertainty or indecisiveness increases from 11 per cent among those in the highest knowledge bracket to 41 per cent among those with little or no knowledge (see Table 5).

Table 5: voting intention in a hypothetical second referendum on the Maastricht Treaty by levels of knowledge of the EC, Ireland, 1993

	0→1	2	3	4	5→6	All
	%	%	%	%	%	%
For	41	56	65	73	78	63
Undecided	41	28	18	11	11	21
Against	18	15	18	17	11	16
N	149	229	263	276	91	1,008

Source: Eurobarometer 39, 1993

Question Wording: see Richard Sinnott, 'Knowledge of the European Community in Irish Public Opinion: Sources and Implications', *Institute of European Affairs Occasional Paper*, No 5, Dublin Institute Of European Affairs, 1995.

It is all too easy to assume that the public is well informed and that it holds well-structured and stable opinions that can be readily consulted and brought into the legislative process as the Constitution requires. The reality of public opinion is far from this happy state. The evidence presented above shows an extensive lack of interest in and lack of knowledge of public affairs. This is the case not just in Ireland but virtually throughout the member states of the European Union and elsewhere and applies not just to European affairs, as illustrated by the data presented, but to politics and public affairs generally. This lack of interest and lack of knowledge affect the extent and quality of people's participation in the political process, most tangibly in the case of referendums.

But the problem goes deeper than the problem of interest and knowledge. There is the larger question of the nature of public opinion, in particular the question of how well structured and consistent and how stable people's opinions are. This has been a

major issue in political science and social psychological research for decades and the overall conclusion of this literature is that public opinion at the individual level is neither stable nor well structured. As Zaller (*The Nature and Origins of Mass Opinion*, Cambridge University Press) puts it, individuals tend to have ‘a series of partially independent and often inconsistent’ attitudes and which attitude comes to the fore, for example in an opinion poll, depends on the context and the stimulus presented. By analogy, one can apply this point to the referendum process. The quality of the public’s involvement in a referendum and, ultimately, the quality of the decision they make depends on the extent of the stimulation they receive and the extent to which the referendum process assists citizens in coming to a decision and especially in sorting out ‘the partially independent and inconsistent’ attitudes they hold. The implication is that a major effort at political education, political mobilisation and political persuasion is required if the involvement of the public in the referendum process is to be reasonably satisfactory.

These reflections on the nature of public opinion indicate the enormity of the task of informing, stimulating and mobilising voters in preparation for a referendum. In recent referendums, and in particular in the 1998 referendums, this task has fallen mainly on the shoulders of the various referendum commissions that have been established. The evidence presented so far suggests that even the very strenuous efforts of the 1998 Referendum Commission were not equal to the task. The relevant evidence consists of the low turnout (relative to the magnitude of the issues at stake); the extent to which abstention in the Amsterdam Referendum was related to lack of knowledge and understanding; and the extent to which, among those who did turn out to vote, a widespread feeling of not being sufficiently well-informed led to a ‘no’ vote on the Amsterdam Treaty. This indirect evidence of the limited impact of the Referendum Commission campaign is confirmed by direct evidence of the public’s response to its activities that comes both from the EC Commission/All Party Committee/Lansdowne poll and from the research conducted by the Referendum Commission itself.

The impact of the 1998 Referendum Commission

The activities of the Referendum Commission did significantly affect the sources to which citizens turned for information about the Amsterdam Treaty. This can be seen by comparing the results of the 1998 opinion poll with the results of a poll carried out for the EC Commission Office after the Maastricht Referendum in 1992. In order to produce comparable evidence regarding the two referendums, the 1998 survey asked an identically worded question to that which had been asked in 1992, namely: ‘Where did you get most of your information about the Amsterdam Treaty?’. As is evident from Table 6, there was a considerable change in the public’s sources of information about the respective treaties in the two referendums. Each of the three main sources of information about the treaty in 1992 – television (62 per cent),

newspapers (47 per cent) and radio (29 per cent) – showed a significant decline in 1998, whereas the category of ‘posters and leaflets’ jumped from 20 per cent to 40 per cent, becoming the second most frequently cited source of treaty information. Thus the Commission achieved a substantial though not a predominant position for itself as a purveyor of information about the Treaty. What one needs to know, however, is how people evaluated the utility of the information provided, particularly when it came to deciding how to vote.

Table 6: sources of information regarding the Maastricht and Amsterdam Treaties

	Maastricht Treaty	Amsterdam Treaty
	%	%
TV	62	53
Posters/leaflets	20	40
Newspapers	47	34
Radio	29	22
Treaty document	6	12
Friends/relatives/colleagues	19	11
Party political broadcast/brochures	11	10
School/college	1	1
Church	2	-
N	1,266	2,610

Sources: EC Commission/Lansdowne Market Research Poll, 1992 and EC Commission/All Party Committee/Lansdowne Market Research Poll, 1988

Question Wording: And where did you get most of your information about the [Maastricht] [Amsterdam] Treaty?

With this in mind, the EC Commission/All-Party/Lansdowne poll presented all those who had voted with a list of possible sources of information that included the activities of the Commission and asked whether and to what extent the respondent used each source ‘in deciding how to vote in the referendum on the Amsterdam Treaty’. Responses were recorded on a scale ranging from ‘a lot of use’ to ‘did not use at all’. On the basis of this more specific evidence, it appears that, in terms of use in deciding how to vote, voters relied more on the traditional sources of information (television, radio and newspapers in that order) than on the Referendum Commission. As can be seen from Table 7, 68 per cent made at least some use of television, 62 per cent some use of radio, 60 per cent some use of newspaper reports and 52 per cent some use of the leaflets put out by the commission. If the criterion is restricted to ‘a lot of use’, much the same order is preserved, though in this case the commission’s publications catch up with newspaper reports (both at 21 per cent). The

advertisements put out by the Referendum Commission were seen to be less useful than its leaflets; indeed it is notable that the commission's advertisements made about the same impact as advertisements by political parties and groups (10 per cent a lot of use and about 30 per cent some use in each case) despite the fact that the volume of advertisements put out by the commission would have been much greater.

The impression of an under-informed electorate and the conclusion that the activities of the Referendum Commission made only a modest impact on the voters is confirmed by research carried out during and after the referendum on behalf of the Referendum Commission itself. For example, among those who claimed some awareness of the Amsterdam Treaty, the proportion who could not identify any specific aspect of the Treaty remained stubbornly stuck at 57 per cent between the first wave of interviewing carried out for the commission (7-10 April) and the second wave a month later and only about two weeks before the actual referendum (5-11 May). The Referendum Commission's research also showed that the publications of the commission were received by little more than half the electorate (56 per cent) and were read, even partially, by only about half that number again. Finally, the materials put out by the commission (booklets, broadcasting and TV advertising) were rated positively (good or quite good) in terms of 'usefulness in making a decision' by a little over one third of the electorate.

Though comparable evidence from other countries regarding the use of various sources of information in referendums is scarce, the data presented in Table 7 can be compared with the results derived from an equivalent question in an exit poll conducted in the course of a referendum in the state of Massachusetts in 1976. This comparison suggests that the leaflets produced by the Referendum Commission in Ireland were significantly less frequently used than the leaflet produced by the state body responsible for referendum information in Massachusetts. A total of 52 per cent stated that the Referendum Commission leaflet on the Amsterdam Treaty was either a lot of use (21 per cent) or some use (31 per cent); the corresponding figure in the Massachusetts case was 75 per cent, with 59 per cent saying that the leaflet was a lot of use and 16 per cent saying it was of some use. At the same time, the rates of use of the other sources (television, newspaper, radio, advertising and advice of friends) were very similar in both cases (compare Tables 7 and 8). It is also worth noting some Australian evidence that suggests that 87 per cent of Australian electors reported having received an official pamphlet in a referendum in 1988 and that 62 per cent of those who received the pamphlet claimed to have read it. The up-take of officially produced information indicated by these Australian figures is considerably better than the up-take indicated by the Referendum Commission's evidence on reception and readership of the commission's publications that was cited in a previous paragraph.

Table 7: use of information sources in deciding how to vote, Amsterdam Treaty Referendum, May 1998

	Television	Radio	Newspaper reports	Leaflets by Referendum Commission	Advertisements by Referendum Commission	Advertisements by political parties & groups	Friends
A lot	34	29	21	21	10	10	8
Some	34	33	39	31	30	29	19
Little	18	20	23	27	31	31	28
Did not use	12	17	15	19	28	29	43
Did not know	2	2	2	2	2	2	2
	1,708	1,708	1,708	1,708	1,708	1,708	1,708

Source: EC Commission/All Party Committee/Lansdowne Market Research Poll 1998

Question Wording: There are a lot of different ways that people get their information. I have a list of several sources of information. As I read them out, I would like you to tell me whether you used them in deciding how to vote in the referendum on the Amsterdam Treaty. Would you say you made a lot of use, some use, little use, or you did not use the source at all?

Table 8: use of information sources in deciding how to vote, Massachuettas/State Referendum, 1976

	Information for Voters pamphlet	Newspaper reports	Television news reports	Radio news or talk shows	Paid advertising on ballot questions	Advice of friends
A lot	59	39	32	21	10	7
Some	16	34	32	34	22	21
Little	6	13	17	19	21	23
Did not use	19	14	19	26	46	49
N	1,546	1,546	1,546	1,546	1,546	1,546

Source: Secretary of State's exit poll, Massachusetts, 2 November 1976, quoted in *Direct Democracy* by Thomas E Cronin, Harvard University Press, 1989

Question Wording: There are a lot of different ways that people get their information. I have a list of several sources of information on the ballot question. As I read them off, I would like you to tell me whether you used them in deciding how to vote today... Would you say you made a lot of use, some use, little use, or you didn't use the source at all?

In summary, the challenge of securing widespread and informed participation by voters in a referendum is immense. Despite the best efforts of the Referendum Commission, informed participation in the 1998 referendum on the Amsterdam Treaty fell short of what can be regarded as both desirable and feasible. This raises the question of whether or not greater emphasis should not be placed on promoting partisan debate.

Appendix IV

Attitudes and Behaviour of the Irish Electorate in the Referendum on the Treaty of Nice *

Introduction

The purpose of the report that is summarised here is to examine what the Irish electorate did (and did not do) on 7 June 2001 and why. The report is based mainly on an analysis of a survey carried out in the aftermath of the referendum on behalf of the European Commission Representation in Ireland (referred to from here on as the ECR survey). The survey was conducted by Irish Marketing Surveys Ltd in association with EOS Gallup Europe. Fieldwork for the survey was conducted between 20 August and 10 September 2001 among a quota sample of 1,245 adults. The questionnaire is presented in an appendix to the full report. The report also draws on the Eurobarometer series of surveys (1973-2001), the ISSP (International Social Survey Programme) 1996 survey on national identity, the post-Amsterdam survey carried out on behalf of the European Commission Representation by Lansdowne Market Research and the MRBI/Irish Times surveys conducted during the Nice referendum campaign.

The referendum results

Analysis of the results of the referendum indicates that

- more than half of those who had voted 'yes' to Amsterdam abstained in the Nice referendum.
- because turnout in European referendums in Ireland has varied from a high of 70.9 per cent (1972) to a low of 35.4 per cent (2001), the actual growth in the size of the 'no' camp as a proportion of the electorate is much more modest than the 2001 result in particular might seem to suggest
- the 'no' vote in European referendums *as a proportion of the whole electorate* has grown from 11.9 per cent in 1972 to 21 per cent in 1998. In the Nice referendum of June 2001, the 'no' vote, again as a proportion of the electorate, actually fell back to 18.5 per cent
- whereas 53 per cent of the prior 'yes' vote seems to have stayed at home, 'only' 36 per cent of prior 'no' voters did so. That 17 percentage point turnout differential is by far the largest factor explaining why the proposal to ratify the Nice Treaty was lost.

* This appendix reproduces the Executive Summary of Professor Richard Sinnott's analysis and report on the results of a survey of public opinion carried out for the European Commission Representation in Ireland by Irish Marketing Surveys Limited in association with EOS Gallup Europe. Full report, including figures and tables, is available in the Representation's website: www.euireland.ie

- the evidence also indicates that the ‘yes’ side only managed to persuade one-third of its Amsterdam supporters to vote ‘yes’ to Nice and that about one-in-ten 1998 ‘no’ voters voted ‘yes’ in the Nice referendum.

Arising from all this, the main questions to be answered are: Why did people abstain in such large numbers? What were the factors that led to a majority ‘no’ vote?

Irish attitudes to integration

The ECR and other surveys provide evidence on attitudes to integration and on people’s experience of the referendum that can be used to tackle these questions. Specific findings in relation to people’s attitudes include:

- only one person in ten, or, at most, one person in six has a substantial interest in European affairs; on a nine-point scale ranging from little or no interest to very interested, only one-third make it beyond the half-way point
- an index of knowledge of the European Union and its institutions shows a rather sorry picture – 63 per cent score zero, 25 per cent score 1, 10 per cent score 2 and a mere 2 per cent score 3
- at first sight, Irish attitudes to integration look very positive – 72 per cent of the Irish adult population believe that Ireland’s membership of the EU is a ‘good thing’, a level of support that is some 25 percentage points above the European average
- on other measures of attitude, however, the picture is rather different – faced with a hypothetical dissolution of the Union, 54 per cent of respondents say they would be indifferent or simply don’t know what to think
- this indifferent/don’t know proportion grew significantly between 1998 and 2001 to a point at which it now outnumbers those showing any enthusiasm for integration; in short, well before the referendum itself, there were signs of a small but significant shift in Irish attitudes to integration
- attitudes have also shifted on a measure that taps people’s leanings towards full integration versus the protection of independence; in 1996, 55 per cent favoured the pro-integration option and 32 per cent leaned towards the protect independence option; between then and the final Irish Times/MRBI poll of the Nice campaign, support for the full integration option declined from 55 to 40 per cent with the result that, shortly before polling day, anti-integration sentiment had inched ahead of pro-integration sentiment

- in the wake of the referendum pro-integration support fell further and now stands at only 25 per cent, or less than half what it was in 1996
- anti-integration sentiment also fell back from the peak it had registered in the final poll of the Nice campaign and, at 35 per cent, it is now just slightly ahead of what it was in 1996
- most importantly, these levels of support for both the pro- and the anti-integration positions must be read in the light of the fact that each is outnumbered on this dimension of attitude to integration by the combination of the uncommitted and, or, the confused.

Attitudes to issues in the Nice referendum

Turning from overall support for integration to the specific issues that arose in the Nice referendum campaign, the ECR survey shows that

- there is a plurality in favour of enlargement of the Union (41 per cent say they are in favour and only 15 per cent say they are against) but it is also important to note that 43 per cent have not made up their minds on this issue
- on neutrality and EU co-operation in the area of foreign and security policy, opinion is spread across a wide spectrum: 50 per cent come down, with varying degrees of commitment, in favour of participation in EU peace-keeping/peace-making operations (as against 15 per cent who lean toward refusing to participate in such operations) while, at the same time, 40 per cent came down on the side of strengthening neutrality even though this might mean being less involved in European foreign and defence policy (as against 19 per cent who lean towards accepting limitations on neutrality). Thirty-six per cent take a don't know or non-committal position on the EU peace-keeping/peace-making operations, while 41 per cent do likewise on the neutrality issue
- on the issue of EU decision-making processes, almost half (46 per cent) either take a non-committal middle position on the scale or give a don't know or no-opinion response; the half (approximately) that do take a view are fairly evenly divided between those who are satisfied and those who are dissatisfied, though the latter are somewhat more intense in their view
- on the more general issue of the exercise of power in the European Union, opinion is considerably more clear-cut and, from the point of view of the Union, more negative; asked to choose between the two statements that 'The big countries in the EU have far too much power and influence' and the statement that 'the small countries in the EU are well able to defend their own interests' only 30 per cent were non-committal and 51 per cent came down in favour of the view that the big countries have

too much power as against 19 per cent who took the view that the small countries are well able to look after themselves

- on the issue of whether current proposals for the development of the European Union will make things like divorce and abortion more easily available in Ireland, 47 per cent adopted a non-committal or don't know position on the scale; a further 20 per cent tended in varying degrees to dismiss the idea that there is any such effect; however, one third of people believe, again with varying degrees of conviction, that such an effect is likely, with eleven per cent being fully convinced that this is so.

The referendum experience

The ECR survey also provides evidence of people's experience of the referendum:

- for most of the electorate, that experience was not a happy one – by referendum day, a mere 8 per cent felt they 'had a good understanding of what the treaty was all about' and a further 28 per cent felt that they 'understood some of the issues but not all that was involved'; thus, two-thirds of people felt either that they were 'only vaguely aware' of the issues involved (28 per cent) or that they 'did not know what the Treaty was about at all' (35 per cent)

- when abstainers were asked: 'Had you voted in the referendum on 7 June, would you have voted in favour or against the Nice Treaty?' 20 per cent of abstainers said that they would have voted 'no' while only 10 per cent said they would have voted 'yes'; the really striking fact, however, is that 69 per cent of those who abstained indicated that they still did not know how they would have voted.

The fact that referendum communication and campaigning left something to be desired is confirmed by respondents' less than enthusiastic evaluations of a wide array of sources ranging from the media, to the explicit campaigns, to informal discussions:

- none of the sources examined was found to be of value by even half the respondents

- the sources of information found to be most valuable were television news and current affairs programmes (45 per cent), discussion within families and among friends and colleagues (43 per cent), radio news and current affairs (42 per cent) and the newspapers (40 per cent)

- the leaflets and brochures circulated by the parties and organisations campaigning on each side come in a good way behind the media, the 'no' campaign (31 per cent) being a tiny fraction ahead of the 'yes' campaign (28 per cent) in this respect

- given its assigned role as an even-handed purveyor of information and arguments that are meant to state both sides of the issue with equal force, a positive rating of 30 per cent for the Referendum Commission is a particularly poor reflection on that aspect of the communication process
- one-in-four respondents said that they found the Nice Treaty a valuable source of information; as it is highly unlikely that many people had access to the text of the treaty, this proportion presumably reflects people's sense of having considered aspects of the treaty as conveyed in media coverage and in public debate
- a similar proportion found the Government's White Paper on the Nice Treaty or the summary of that document to have been at least of some value
- at the lower end of the scale of perceived value one finds the poster campaign (19 per cent at least of some value), the Office of the European Commission and the European Parliament (14 per cent) and internet sources (11 per cent).

Sources of abstention in the Nice referendum

By far the most frequent subjective explanation given for abstention was lack of information and lack of understanding of the issues; forty-four per cent of Nice abstainers explained their non-voting in these terms; this is up substantially compared to the Amsterdam referendum, when 'only' 25 per cent of abstainers cited lack of knowledge or understanding as their reason for not voting.

The extent of the influence of this sense of lack of understanding of the issues is confirmed by detailed statistical analysis that shows that, controlling for the effect of habitual abstention, non-voting in the Nice referendum

- was influenced most of all by the feeling of not understanding the issues
- the probability of abstention was also increased by being young (either under 25 or between 25 and 34), by resort to the offices of the European Commission and European Parliament for information and, more marginally, by the view that the big countries in the EU wield too much power and influence
- on the other hand, the probability of abstention was reduced by having a lower middle class occupation, by finding the Government's White Paper or a summary of it helpful, by finding discussion of the issues with family, friends or colleagues helpful and by the belief that current EU developments will make things like divorce and abortion more easily available in Ireland.

Sources of the 'no' vote in the Nice referendum

As with the analysis of the sources of abstention, the sources of the 'no' vote can be examined by first considering people's subjective accounts of their reasons for voting as they did and by following this with a detailed statistical analysis of the socio-demographic and attitudinal characteristics of 'yes' and 'no' voters.

- On the 'yes' side, the predominant characteristic of people's conscious or remembered reasoning was a general belief in European integration or in Irish membership of the Union and in the desirability of enlargement.
- On the 'no' side, the predominant characteristic of the voters' decision process was a feeling of not being adequately on top of the issues and a tendency to follow the maxim, which had been prominent in the 'no' campaign in the Amsterdam referendum, 'if you don't know, vote no'.
- Forty-one per cent of 'no' voters decided during the last week of the campaign or on the day of the referendum itself. Late decisions of this kind occurred among only 29 per cent of 'yes' voters; this suggests that ratification of the Nice Treaty may well have been lost in the final stages of a less than riveting campaign.

The statistical analysis provides considerably more detail on the factors leading to a 'no' vote:

- even when controlling for a wide range of variables, there was a persistent gender factor, women being more likely to vote 'no'
- predictably, those who found the 'yes' campaign material valuable were more likely to vote 'yes' and vice versa for the 'no' campaign and voting 'no'
- two types of media coverage seem to have influenced vote choice but in opposite directions: those who found television news and current affairs programmes valuable were more likely to vote 'yes', while those who found radio news and current affairs programmes valuable were more likely to vote 'no'.
- finally in this category of communication effects, those who found the offices of the European Commission and the European Parliament useful were more likely to vote 'yes'.

Attitudes, issues and the 'no' vote

The influence of political attitudes and perceptions is particularly important because such influences need to be taken into account in responding to the outcome to the referendum. The key findings in this regard are that

- the most important attitudinal influence on the 'no' vote seems to have been dissatisfaction with the way in which policies and decisions are made in the Union
- support for strengthening Irish neutrality even if this means being less involved in EU co-operation on foreign and defence policy is the second most important influence but its effect is noticeably weaker than the effect of dissatisfaction with EU decision-making
- the neutrality issue is closely followed as a factor leading to a 'no' vote by opposition to enlargement and by the feeling that the big countries have far too much power and influence (essentially another aspect of the decision-making issue)
- even allowing for the influence of these specific attitudes, the general preference for an approach to the European Union that emphasises protection of independence rather than full integration also contributed to a 'no' vote
- the perception that current proposals for the development of the Union will have a liberalising effect on the availability of divorce and abortion in Ireland also affected vote choice; however, the effects of this perception are complex and are different in different segments of the society; the overall effect of this perception *is to increase the probability of voting 'no'*; however, this overall effect only becomes apparent when one takes account of the fact that the combination of a perception of a liberalising effect and being under 35 *increased the probability of voting 'yes'* and, likewise, that the perception of liberalising effect and being female *also increased* the probability of voting 'yes'
- 'no' voters were more inclined to feel they did not understand the issues and were inclined to make up their minds only in the final stages of the campaign; 'yes' voters, on the other hand, were more likely to feel uncertain about the decision they had made.

Conclusion

The point is so important that it bears repetition: abstention, rather than a swing from 'yes' to 'no', was the key feature of the behaviour of the Irish electorate in the referendum on the Nice Treaty. This means that, instead of asking a single and apparently obvious question (Why did the Irish people turn against EU treaty change?), one must ask two distinct questions: (1) Why did so many abstain? and (2) Of those who did come out to vote, why did a majority vote 'no'?

The major factor accounting for the extraordinarily high level of abstention was the electorate's sense of not understanding the issues involved. This comes across very strongly in the subjective accounts given by those who abstained and is confirmed by the statistical analysis that assesses the impact on abstention of a

wide range of variables and identifies the sense of lack of understanding as the key factor. This finding is consistent with many other aspects of the data in the ECR survey, principally with the recurring high level of don't know or non-committal responses. These indications of high levels of indifference and don't know are confirmed by data from the Eurobarometer and other surveys, underlining the fact that the problem of lack of understanding and lack of commitment on European issues is not peculiar to the issues arising from the Nice Treaty.

People's experience of the Nice referendum campaign, across a wide range of communication channels, was not a happy one and did very little to increase their propensity to vote. With the exception of the Government's White Paper (or the summary of it), the campaign process failed to contribute to mobilising participation and, by implication, failed to enable electors to clarify their minds on the issues. As a communication process, taking that term in the broadest sense to include a wide range of communication processes, the campaign did not work either as well as it might have, or as well as it needed to given the prevailing sense of incomprehension in the mind of the electorate. There is no doubt but that the Nice Treaty is hard to explain. The point is that this cannot provide an alibi – given the Irish constitutional context, ways must be found to inform the public about the issues involved and to foster the public's confidence in its understanding of the issues. As to people being mobilised to vote by their attitudes or beliefs in this area, it is striking that the only attitude/belief variable that contributed to increasing the probability of turning out to vote was the perception that current proposals for the development of the EU would make divorce and abortion more readily available in Ireland.

The most important attitudinal or issue-related determinant of the 'no' vote seems to have been general dissatisfaction with EU policy-making processes rather than concern about specific issues. However, support for strengthening Irish neutrality and opposition to enlargement (although the latter was very much a minority view) also contributed to a 'no' vote. So too did the perception that EU developments would have a liberalising effect in regard to moral issues, a very important point being, however, that the direction of this effect was different in different segments of the society.

Finally, one should note that a 'no' vote tended to be a late decision. This fits in with the finding that it was boosted by the sense of lack of understanding of the issues. But this kind of potential volatility is not confined to the 'no' side, as it appears that 'yes' voters were more likely to be uncertain about their decision. The fact that these characteristics of both 'yes' and 'no' voters persist even when controlling for the influence of all the other variables underlines one of the fundamental messages to emerge from this research, namely that lack of understanding, uncertainty and indecisiveness are quite pervasive in Irish public opinion in this area. All of this points to the need for a clear political debate about Europe, a debate that may change some

minds from 'yes' to 'no' and some from 'no' to 'yes' but a debate that above all will need to change minds from incomprehension and confusion to some degree of clarity and conviction. The recently established National Forum on Europe will no doubt contribute to this process but it is also the case that how referendums are conducted and how they are approached by all concerned will need to be critically examined.