

Family and Care: Ireland's Constitution Catching up With Society

Article by Beatrice White

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Irish citizens will soon be asked to vote on two changes to the country's Constitution: to expand the definition of the family, and to remove sexist references to the role of women and mothers in society. The referendums are part of an ongoing effort to bring the country's founding charter in line with the values of Irish society, but the nature of the proposed changes poses serious challenges to constructive public debate.

On 8 March, Irish citizens will go to the polls to vote in two referendums on proposals to alter the country's Constitution. The first proposal, known as the Family Amendment, concerns the definition of the family. It would amend Article 41.1.1. so that families founded on "durable relationships" are seen as equivalent to families founded on marriage. Provisions recognising the family as "the natural primary and fundamental unit group of Society" would remain, alongside a commitment, in a separate article, on behalf of the State to "guard with special care the institution of Marriage and to protect it against attack."

The second proposal, referred to as the Care Amendment, would delete two articles of the Constitution which have come to be viewed as enshrining sexist language and assumptions about gender roles. Article 41.2.1 stipulates that "by her life within the home, woman gives to the State a support without which the common good cannot be achieved." From this follows that the state shall "endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home" (Article 41.2.1). The two articles would be replaced by a new one, recognising the value of care and its role in enabling Society to achieve "the common good".

These referendums follow two previous ones which generated significant public debate: on marriage equality in 2015 and abortion rights in 2018. Both of these votes saw a high level of engagement among civil society organisations, received intense media coverage, and mobilised the Irish diaspora through international campaigns. As a result, both instances saw high turnout to back the proposed changes, which had clear legal and policy implications for legislators to act upon (legalising same-sex marriage and enabling access to abortion). However, in the case of the upcoming referendums, the consequences for the country's policies and laws, as well as for the rights of its citizens, are less certain.

Reading the room

As with previous referendums, the impetus for the vote stemmed from civil society campaigns and public consultations. The proposed changes are the culmination of an extended period of legislative scrutiny and deliberative citizen processes, involving various advisory bodies, parliamentary committees, and civil society groups.

In 2019, a Citizens' Assembly on Gender Equality chaired by former EU Commission secretary general Catherine Day was established. In its 2021 report, the Assembly made a series of recommendations on furthering gender equality in Ireland. The constitutional changes they suggested included broadening the protection afforded to the family beyond the marital family and removing the articles referring to women in the home to replace them with gender-neutral language. This would oblige the State to take

reasonable measures to support care within the home and wider community. The Convention on the Constitution, which comprised 100 representatives of Irish society, made similar recommendations in its [2013 report](#).

Based on those recommendations, The Oireachtas (Irish Parliament) Joint Committee on Gender Equality delivered its final [report](#) in 2022, in which it also called for those references to be deleted and replaced with gender-neutral language that would recognise and value the role of care in the home, carried out by both men and women.

While these processes of consultation and deliberation demonstrated a broad consensus on the general direction of travel, there remained important differences of views in terms of what should replace any deleted text, and how exactly it should be phrased. The protracted nature of the consultation meant that the Government faced a difficult task to draft wording of new provisions that would satisfy the broadest number. In July 2023, the Taoiseach (prime minister) [Leo Varadkar admitted to experiencing difficulties](#) in agreeing on the precise questions to ask the public, but [in January 2024 the Irish Electoral Commission](#) officially announced the holding of the referendums, marking the start of the campaigning period.

Making the case for change

Ireland's current government is a majority coalition formed of the Green Party and two centre-right parties: Fine Gael, to which Taoiseach Varadkar belongs, and Fianna Fáil. In early February, the Greens became the first political party to launch a campaign for a "Yes-Yes" vote. In [a press release](#), the party referred to the promise in its 2020 manifesto to remove the clauses containing sexist language and announced that it would run a poster and leafletting campaign (something most other parties have opted not to do, despite taking positions in favour of or against the proposals).

Launching the campaign, Green Senator Pauline O'Reilly said: "In a time when more than four in ten children are born to unmarried parents, the Constitution is completely out of step with modern life. We cannot, and should not, say that some families are superior to others, this referendum is about treating all types of family equally."

A number of civil society groups have also come out in support of the proposed changes. The National Women's Council of Ireland described them as an important step in the right direction. In a press release to accompany the launch of their Yes-Yes campaign, [NWC highlighted](#) that Article 41.2 "never led to any supports for women to work solely within the home, but underpinned discriminatory practices, such as the marriage bar, and the exclusion of women from many sectors of society [...] A Yes vote ... sends a strong signal to men that they can, and should, play an equal role in looking after their families."

The Care Amendment – a token gesture?

While many civil society groups have backed the government's proposals, the initial response to the proposed Care Amendment [was less than enthusiastic](#). Beyond removing the gendered language and reference to women's duties in the home, some groups wished to see the State committing itself to provide additional resources for carers to ensure they were not obliged to work outside of their caring responsibilities to avoid economic hardship, rather than simply acknowledging the value of their contribution to society.

Roderic O'Gorman, the Green Minister for Children, Equality, Disability, Integration, and Youth, suggested that the Care Amendment could [pave the way](#) to boosting resources for disability services,

single parents, and carers. However, close analysis of the amendment by legal experts has not identified any obligation on the state to provide economic support for carers either within or outside the home.

Seána Glennon, Chief Outreach Officer at UCD Centre for Constitutional Studies, explained: “The Irish Constitution generally does not explicitly protect the various socio-economic rights (such as rights to healthcare, housing, food – an important exception being the right to primary education). In addition, the courts have generally been reticent to imply protection for socio-economic rights into the Constitution.”

“The Citizens’ Assembly recommended a stronger form of wording on the upcoming referendum (to ‘oblige’ the State to take reasonable measures to support care within the home and wider community) than the wording ultimately put forward by the government (‘shall strive to support’). In the event that the referendum passes, the question of economic support for carers will therefore likely continue to be a policy matter for the state,” she added.

Further criticism of this amendment has come from Peadar Tóibín, a TD (Member of Parliament) and leader of the socially conservative Aontú party. Speaking to RTE Radio 1, Tóibín argued that it “situates care within the family and insulates government from its responsibilities to care for older people and people with disabilities”, and described it as “a virtue-signalling, meaningless husk of an amendment”.

The Greens’ O’Gorman defended the choice of wording, arguing that “This is a new legal obligation [...] This amendment isn’t just symbolic. The intention is that it will place an onus on this Government and all future governments to a progressive realisation of support for care within a family.”

The Family Amendment – leaving it to the courts?

The Family Amendment has also been the target of criticism. Senator Michael McDowell, former Tánaiste (deputy head of government) wrote that introducing the concept of “durable relationships” as the basis for defining the family without specifying these would lead to legal issues and unforeseen consequences.

Green Senator Pauline O’Reilly explained that “this amendment is about single parents and their children, unmarried parents and their children, long-term co-habiting couples, and grandparents raising their grandchildren where they are a legal guardian. It’s not practical to list out every possible family grouping in the Constitution – that’s why the word ‘durable’ is being proposed.” O’Reilly also dismissed claims that the amendment could open the door to recognising polygamous relationships under Irish law.

In its communications, the Government has also taken care to emphasise that the institution of marriage will remain protected and conserve special status, in a bid to rebut claims that the proposals amount to an attack on marriage. In spite of this, conservative civil society organisations, such as the Iona Institute, who oppose both amendments, have made this argument. Addressing a meeting of the Institute last month, campaigner and barrister Maria Steen stated that “these proposals amount to a radical change in how we conceive of the family, they devalue women and mothers – and consequently children, and amount to an attack on domesticity itself.”

Assessing the public debate

Opinion polls conducted in February suggest a majority of Irish citizens plan to vote in favour of the Family and Care Amendments (52 per cent and 59 per cent respectively). They also revealed that over half of voters felt they knew “hardly anything at all” about the referendums.

The lower profile of the campaigns compared to previous referendums, as well as the complexity and nuances of the changes and their ramifications, present democratic risks.

To remedy this, proponents of the changes have been working hard to try to get their message across as simply as possible, and educational institutions and civil society organisations are also making efforts to circulate reliable information. To counter the spread of false claims and disinformation, various media outlets have been fact-checking claims.

Despite these efforts, the lower profile of the campaigns compared to previous referendums, as well as the complexity and nuances of the changes and their ramifications, present democratic risks. For example, many people, particularly the young, may not feel sufficiently informed to vote, or they may simply reject the proposals if they do not feel they fully understand them. Alternatively, they may vote based on factors beyond the scope of the referendums, such as the government's performance more broadly.

A positive result would be a significant win for the three coalition parties in the final stretch of the government's term, particularly in the context of an upcoming general election in Ireland, as well as this June's European elections. Given their ministerial portfolios in government and their campaigning on the ground, a defeat could be a particular setback for the Green Party.

Concerning the state of the public debate, Green Irish MEP, Grace O'Sullivan, said: "Civil society is playing a leading role in this referendum which is fantastic to see. While the debate might not be as divisive as some of the previous referendums proved to be, similar far-right movements from within and without Ireland have tried to hijack the debate and at times they have had success."

"Referendums are a good way to keep citizens engaged in political processes. However, they can also be difficult and divisive initiatives that force victims to lay their trauma at the altar of public discourse," she added. "We need to make sure we always hold referendums to a higher standard than other political debates that have recently descended into something more resembling reality TV. The media has a particularly important role in that regard."

Given the nature of the questions addressed, there is also a risk of the public debate descending into a "culture war", particularly around the issue of gender. Self-described feminist groups adopting a "gender-critical" perspective have expressed concerns about the removal of the reference to women in the Care Amendment, placing them alongside more religious or right-wing Conservative groups.

The end of an era?

Beyond the technicalities of the referendums, the nation's founding legal document plays an important role in Irish political life. "Ireland has a very particular Constitution," said Grace O'Sullivan, "One that not only sets out the basic rights and duties of citizens, but that delves into very detailed aspects of Irish life. For that reason, we will continue to hold referendums for decades to come to update and mould the Constitution to reflect the Ireland we are and the Ireland we want to see."

The proposals set out are a further reflection of a profound cultural shift in Ireland, a society in which

deeply religious, patriarchal, and conservative views long dominated. The two referendums will take place on International Women's Day, the theme of which this year is inclusion. It seems fitting, therefore, that it will mark the end point in a debate around how inclusive the Constitution should be, and about its provisions on the role of women in society.

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This debate takes place at a particular historical moment in Ireland. This year marked 40 years since Ann Lovett died at the age of 15 after giving birth alone in a grotto to a baby who also did not survive. It was a watershed moment for Ireland, triggering a nationwide debate around the treatment of unmarried mothers – a debate which re-emerged in connection to the anniversary of her death.

Profoundly misogynistic attitudes were enshrined within Ireland's Constitution for many decades. In her 2019 book *Shame*, Caelainn Hogan explains how in the past, "The State [...] was happy to allow Catholic dogma to drive public policy. The new constitution brought in by Éamon de Valera in 1937 conferred special status on the Catholic Church – a provision not overturned until 1972." The deep-rooted stigmatisation and discrimination against children born outside of marriage and their mothers was therefore legitimised in the Constitution and given legal form through the status of "illegitimacy", which was only abolished in 1987. These attitudes and the institutional arrangements which they enabled (described by Hogan as the "shame-industrial complex") led to widespread abuses and immeasurable suffering.

It would no doubt be an overstatement to view these referendums as an isolated moment of reckoning for the country with these traumatic episodes of its history, yet it is important to situate them in this context. While not a shortcut to reconciliation or reparation of past injustices, they form part of an ongoing process and society-wide public debate concerning equality and fundamental rights. Proponents of the changes argue that it is a matter of updating the Constitution to be a more accurate reflection of modern life and society in Ireland today. But given the Constitution's crucial role underpinning national laws and policies, the decision voters choose to make on 8 March will also have important consequences for the future of the country and its citizens.



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