Obstacles to constitutional participation: Lessons from diverse voices in post-Brexit Northern Ireland and the Republic of Ireland

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Abstract

A challenge for constitutional processes is to facilitate popular participation, including among marginalised groups. Uneven inclusion is highly likely 'upstream', in the early stages when ground rules and foundational principles guiding constitutional change are fleshed out, and particularly so in deeply divided societies. This article explores the obstacles to such inclusion in constitutional discussion in Northern Ireland and the Republic of Ireland after Brexit, asking what 'other' voices (including women's groups, ethnic minorities and youth) experience as barriers to participation and how they suggest these barriers can be overcome. We categorise barriers as situational, emotional and discursive, and show that discursive obstacles are experienced as the principal barrier to participation. We argue that an inclusive process requires not simply new institutional frameworks and agendas for deliberation, but also an overhaul of channels between policymakers and grassroots, enabling policymakers to communicate policy constraints and facilitating grassroots' critique into policy.

Keywords

constitutional processes, divided societies, inclusion, Northern Ireland, popular participation, Republic of Ireland

Introduction

There are strong arguments that popular participation in constitution making is of value for both normative and pragmatic reasons (Choudhry and Tushnet, 2020). There may also be costs to participation: in divided societies it may sometimes be vulnerable to manipulation by extremists and make elite agreement more difficult (Horowitz, 2021), and it may

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exist in tension with reasoned, informed deliberation (Fishkin, 2009). We take inclusion and participation as important but not necessarily overriding values in constitutional processes and ones that, other things equal, should be maximised.[1] Our purpose in this article is to explore the obstacles to participation in one contentious case of constitutional discussion, and to suggest some ways these obstacles can be overcome without provoking conflict and without prejudice to values of reasoned informed discussion. We offer an empirically informed argument for the value of participation, especially at the early stages of constitutional discussion.

Participation stands to be particularly valuable 'upstream' in constitutional discussion, in the early stages when ground rules and foundational principles are discussed and citizen input is most likely to affect the outcomes. But it is also likely to be uneven at this time, particularly in conflict to peace transitions where a large and diverse set of 'others' distance themselves from contentious bloc politics. We investigate one such case – the emerging constitutional debate on the island of Ireland (Northern Ireland and the Republic of Ireland[2]) after Brexit in a wide-ranging interview and focus group study to ask what 'other' voices perceive as the obstacles to participation in constitutional discussion. Our research finds that these 'others', including women's groups, ethnic minorities and youth, face obstacles to their participation that are considerably more wide-ranging than usually assumed. They include a lack of resources: not simply economic or educational resources, but also channels of communication and accountability. Obstacles include what may be called discursive opportunity – our participants said the dominant constitutional discourse deters participation because it triggers conflict responses and fails to speak to shared experience. If maximum participation in defining fundamental constitutional norms and aims is to be facilitated, we argue that it will require new arenas of discussion and deliberation, and a radical overhaul of existing channels of input and accountability.

In the next section, we review the literature on popular participation in constitutional processes, particularly as relevant to deeply divided societies. After discussion of our research design and methods we present our key findings on the obstacles to participation in constitutional discussion. We then discuss the significance of these findings for research on constitutional processes in Ireland and in general. In conclusion, we discuss the wider significance of our findings for scholarship and policy, and suggest avenues for future research.

Constitutional theory, popular participation and divided societies

Scholarship on constitution making and constitutional change has increasingly focussed on the constitutional process and the conditions under which it leads to broad-based consensus and political stability. Participation and inclusion are important factors: the 'maxim that constitution making should be participatory' remains prevalent in the literature and among the international policy community (Lerner and Landau, 2019: 10–11). According to Choudhry and Tushnet (2020: 173), popular participation in constitution making has come to be regarded as promoting legitimacy of the new constitutional order, educating citizens in the practice of self-government and building 'a shared political identity or at least a modus vivendi' among divided groups. There is now significant literature on the potential for public participation to shape the content of the new or revised constitution (Hudson, 2021) and on the relative importance of different forms of participation (as citizens) (Eisenstadt et al., 2015) or inclusion (as groups) (Eisenstadt and Maboudi, 2019;

Maboudi, 2020). According to Elster's (2012) hourglass model of constitution making, popular participation best takes place upstream in consultations and downstream in a referendum; the narrow middle is usually reserved for elites drafting text. We are interested in the 'upstream' generation of ideas, consultations and deliberation on the ground rules of the constitutional process and foundational principles. Recent work suggests the importance of this initial phase of participation if indeed citizens' ideas and preferences are to inform the text (Hudson, 2021) and even more important inform the political culture that ensures that the constitution can bed in and inform political and public practice (Carolan, 2020). Eisenstadt et al. (2017: 5) argue that 'failure to incorporate substantive societal input early on amounts to an "original sin" that is difficult to rectify later through input'. They underscore the challenge: that 'bottom-up participation early on is difficult to achieve . . . because the means by which people might participate is most uncertain at the front end' (Eisenstadt et al., 2017). In this uncertain initial phase, participation can take a variety of forms, from online submissions to consultations to targeted surveys to deliberative mini-publics to referendums and other forms of deliberation which can be combined and sequenced (see variously Cruz Ruiz, 2020; Heiss, 2021; Hudson, 2021; Irwin, 2002; Levy et al., 2021).

In actual practice, however, participation is limited. Hudson (2021) shows that self-selected participants in constitution making processes are descriptively unrepresentative of the population. Moreover, the impact of their participation 'dramatically declines as party strength increases' (Hudson, 2021: 10) and accountability is very limited. Deliberative mini-publics are increasingly used to open up constitutional debate.[3] They allow intensive and informed participation by a small but representative sample of the public, and thereby it is hoped to achieve wider legitimacy for the conclusions (Parkinson, 2016). But inclusion remains limited: descriptively representative mini-publics recruit on a limited set of criteria (class, region, gender, generation) and seldom include the clusters of multiply marginalised (see Walsh and Elkink, 2021) and there are questions as to how widely their deliberations are known and discussed in the wider public (Suiter and Reuchamps, 2016). And while the design of mini-publics can vary from citizens' juries to deliberative polls and citizens' assemblies with different composition, format, topic and outputs (Curato et al., 2021), they often pre-set the agenda for discussion.[4] They may set up the topic for discussion in ways that avoid the key issues rather than tackle them; and they may take up the ideas of some groups more than others, and not follow through in policy.[5] Where important issues are tackled, the procedures may prioritise expert information and framing of questions, and dissuade more open participation in defining the questions for discussion (see McEvoy et al., 2022).

All of these problems take a very specific form in conflict-to-peace transitions, where the potential for constitution making to ameliorate or aggravate existing tensions between communities is high. Constitutional processes can help 'bridge differences between identity groups' by providing deliberative space so they can highlight issues of importance to them (Lerner and Landau, 2019: 14; see also Castillejo, 2014) and even help build a sense of political community (Wallis, 2014: 315). But since constitution making deals with the very issues of power, authority and territory that were at the centre of conflict, it also has the capacity to reignite conflict. It is, as Lerner and Landau (2019: 5) note 'an issue with very high stakes'.

In such societies, it is necessary to pay special attention to defining the groundrules, basic principles and procedures well before opening them to a vote (Levy et al, chaps 5, 7). Here the deliberative process is directly relevant (Curato et al., 2017; Steiner et al.,

2017). Deliberative processes can offer potential for recognition, mutual learning and compromise if organised appropriately (see also Drake and McCulloch, 2011; Luskin et al., 2014; O'Flynn, 2007). Partly for these reasons, Levy et al. (2021) argue that deliberative peace referenda play a key role in peace making; and a recent study of Northern Irish public opinion shows strong public support for deliberative 'citizens' assemblies' (Garry et al., 2022b). But the unevenness of participation is even more important in these transitional and divided polities, where bloc parties tend to be strong and well organised and thus likely to dominate discussion to the detriment of citizen participation (Hudson, 2021).

In general, economic and educational resources make political participation easier and more likely to be effective, and the lack of these resources disincentivises participation (Bartells, 2017). But other factors may be even more important in conflict-to-peace transitions. For some in the main ethno-political groups, the trauma of the past is easily re-ignited, trust in their interlocutors is low, group interests predominate over general public interests and there may even be no common language of discussion, in the sense that the concepts used to think about political rights and groupness may be incommensurable (Levy et al, chapters 5, 7). Other reasons have to do with the modes of marginalisation. In such societies, the marginalised range well beyond the less wealthy and less educated to include many and diverse Others, disengaged from the dominant parties and communities: they include ethnic mini-minorities, 'ethnic-rejecting others' (who seek political participation on the basis of identity such as gender or sexuality, not ethnicity) and 'issue-oriented others' (who favour ideological rather than identity focus of politics) (Agarin et al., 2018). These 'others' have fewer channels for policy discussion and influence, and less chance to define the political or constitutional agenda (see Kennedy et al., 2016).

Which of these factors, if any, dissuade people from constitutional participation in deeply divided societies? Are there other factors? And how can the obstacles be overcome? We address these questions through an empirical and inductive analysis of how people respond to the initial stages of constitutional debate in the deeply divided society of Northern Ireland and on the divided island of Ireland.

Research context: Constitutional politics in Northern Ireland and the Republic of Ireland

The island of Ireland offers a distinctive and internally differentiated case study of constitutional discussion in divided places. Constitutional debate has been endemic since the partition of Ireland and the disputed foundation of Northern Ireland a century ago, and has centred on polarising choices about which state – British or Irish – should have sovereignty and which people – Ulster Protestants, Northern Irish, Irish or British – should have the right to decide. More recently, however, British-Irish negotiations reframed the process and understanding of governance in Northern Ireland and the interdependencies across the islands, and the Good Friday Agreement (GFA) of 1998 facilitated an incremental and non-polarising understanding of constitutional change while leaving open the question of state sovereignty for future referendums (see Coakley and Todd, 2020: 538–540).[6] The negotiations for the GFA were largely top-down, with the states controlling the framing of issues and the forums of debate. Brexit has provoked a return to the question of state sovereignty over Northern Ireland and put the question of a united Ireland back on the political agenda in both parts of the island, with political parties taking sharply

polarised positions.[7] The case allows us to analyse the beginnings of a new phase of discussion and to highlight the obstacles to participation, while policy changes towards greater inclusion are still possible.[8]

Two factors are new in the present conjuncture, and each gives hope of a more inclusive process of discussion. First, there have been important political changes in each Irish jurisdiction. In Northern Ireland, up to 20% of voters support middle ground parties that are neither unionist nor nationalist, and there is a much wider swathe of the population – more than half on some counts – which distances itself from the unionist and nationalist blocs (see variously Hayes and McAllister, 2013; Hayward and McManus, 2019; Tonge, 2020). Should there be a referendum on a united Ireland, the votes of this wide and diverse set of people – including the softer supporters of unionist and nationalist parties – would be decisive. But it is far from clear what considerations would affect their vote.

In the Republic of Ireland, though the overriding majority of the population identify as Irish and vote for parties who have a long-term aspiration to Irish reunification, that majority has much changed in composition and preference. First, it has become more diverse, with increasing in-migration especially through the 2000s creating a category of 'new Irish' (Fanning and Michael, 2019). Second, the predominance of the Catholic church has collapsed, in public belief and practice and in political influence (Ganiel, 2016; McNamara and O'Brien, 2022). Third, national consciousness has become more open, plural and civic, and in conjunction attitudes towards reunification have become pragmatic, open-minded and uncertain about what policies are best to secure peace and prosperity. Thus, in both jurisdictions a large section – arguably a majority – of the population are disengaged from traditional forms of nationalism and unionism. We know little about their strength of feeling, the priorities and key issues, and the constitutional options that different groups might wish to consider. We know still less about their perceptions of the constitutional process and the appropriate mechanisms for participation and inclusion. It is this very diverse section of the population whose ideas and preferences we focussed upon in our research.

The second major change has been in the institutional instruments of participation and state interest in them. Constitutional discussion about Northern Ireland was very carefully controlled by the British and Irish states from the 1970s to the 2000s. Even the negotiation of the GFA was prepared for by 15 years of close British-Irish negotiation: the Northern Ireland political parties themselves were invited to revise, not to draft, the provisions (see Coakley and Todd, 2020). Public consultations were very limited, in particular when negotiations with the parties began in earnest, while public attitudes were assessed by a variety of surveys which were used by the political parties to assess the limits within which compromise might be possible (see Irwin, 2002). The GFA was ratified in separate referendums in both Irish jurisdictions (Levy et al., 2021). In Northern Ireland, public participation remained limited: for example, the Civic Forum, provided for in the GFA as a means for civil society engagement, was let collapse in 2002 with suspension of the institutions and has never been reinstated.

By 2020, however, British and Irish governmental practices and priorities were changing. In the Irish state, after the economic crash, and a temporary loss of public trust in political parties, a set of 'citizens' assemblies' were convened – deliberative mini-publics that considered some contentious political issues including marriage equality and removing the constitutional ban on abortion. They proved successful and popular (Farrell et al., 2019; Harris et al., 2021; Suiter et al., 2016) and provide a model for possible future constitutional deliberations, although successive governments have resisted convening

such an assembly in the short to middle term (Suiter, 2021). Other government initiatives (the DFAT Reconciliation Fund, the Department of the Taoiseach's Shared Island Initiative) engage with a wide range of civil society groups on North-South issues.[9] In Northern Ireland, the British administration had been concerned by unionist 'flags' protests after 2012. Increasingly the main civil service departments – the Northern Ireland Office and the Northern Ireland Civil Service – instituted levels of outreach to nongovernmental organisations (NGOs) and interested local parties and attempted to encourage greater engagement from the public, and supported extensive research on public perspectives and attitudes (Nolan et al., 2014). All of this gave some channels for wider public participation which might be expanded should an official constitutional process begin.

Research design and method

The emerging constitutional debate in Northern Ireland and the Republic of Ireland allows us to explore the obstacles to participation at an early phase of constitutional discussion, before choices are defined or timescales determined. Our research focussed particularly on the 'others' who did not identify with the dominant unionist and nationalist parties (although they might sometimes vote for them), who are at present relatively disengaged from constitutional debates, and who constitute a large section of the population. Our priority was accessing a wide range of these 'others' – ranging from ethnic minorities, through 'ethnic-rejecting' others who instead prioritised gender or class identity, to 'issue-oriented' others, for example, socialists and ecologists (see Agarin et al., 2018; Murtagh and McCulloch, 2021). We worked with political representatives and community groups and prioritised access too hard to reach and constitutionally silent populations over representativeness. We had extended focus group discussions and interviews with a wide range of people: ethnic-micro-minorities and representatives of umbrella migrant groups in both Irish jurisdictions; 'ethnic-rejecting others' in local community women's organisations on each side of the Irish border, and in discussions with LGBTQ+ activists; and 'issue-oriented others' in ecological, socialist and cross-community parties. We also interviewed representatives of most of the main nationalist and unionist parties on the island.[10] Altogether we engaged with over 65 people, slightly more in Northern Ireland than in the South, and within Northern Ireland slightly more Catholics than Protestants.

Conducting qualitative research (interviews and focus groups) on Zoom during the Covid pandemic made the interviewing process both harder – in that face-to-face contact was impossible – and easier – in that multiple small focus groups involving people at significant distance from one another could be organised. Interviews were recorded, transcribed, anonymised, coded in NVIVO and analysed.[11] Coding followed the practice of grounded theory, using categories that were drawn from the interviews themselves (Strauss and Corbin, 1997). The coding was cross-checked by each author and the relatively few coding discrepancies were discussed in detail: for example, though identity was coded, it was more often mentioned to dismiss than to affirm its significance.

In the final coding, we grouped themes under seven broad categories: action and engagement; barriers; process; enablers and tools; identity; issues; motivations. The theme of 'barriers' or obstacles to participation was most discussed. These discussions add to our knowledge of why popular participation across diverse groups in the important early stage of constitutional processes is difficult to achieve (Eisenstadt et al., 2017), and how this may be remedied. We focus here on what our research participants shared as the main obstacles to their participation and how, from their perspectives, such obstacles might be overcome.

Research findings

Obstacles to participation: Situational, emotional and discursive

Our research participants engaged in relaxed and positive conversations; in the focus groups people were happy to see each other again, in the midst of Covid isolation. Especially on the border, discussions often began with comments on how much better the situation was than in the past. Participants were pleased to be invited to discuss constitutional issues and tried to be helpful. And yet what they talked about most extensively and fluently were the obstacles to constitutional participation: we analyse these as situational, emotional and discursive.[12]

Situational: where the person's role and life-context make participation particularly difficult, for example, through lack of resources, lack of education, lack of information, lack of channels of communication and debate. Many of our research participants chose to focus on the underlying and often unnoticed resources needed for participation: time and skills. For example, as one woman commented:

> Most women you know, by the time they've come home from work and got the dinner ready and school and everyday life gets in the way and then these [constitutional] questions, oh somebody else will answer that or you know, it'll happen without my input.[13]

Some of the women's focus groups highlighted the need for leadership and training. One recalled how their group had been formed to give 'women the voice in the county and the border areas on important issues, exactly like this actually, you know, and disability, education, domestic violence'. These women agreed that 'it's not easy to be heard'. Some young people participants commented that their experience from having been brought up in the North or the South without much knowledge of life across the border meant that they felt ill-equipped in the conversation, without the requisite information at hand on what change might entail.[14]

Another relevant resource was social legitimacy – the right to voice. Many migrants were reticent to speak and expressed a view that others would say it is for the two main communities to discuss the constitutional issue, not outsiders. This view of what the 'local people' would think and say presented a barrier to participation.[15] One participant from a BME organisation added that many migrants 'often feel we're not really part of the discussion' and try to take a 'neutral position'.[16]

Other research participants – especially those not already connected into political networks – spoke of the importance of institutional channels for recognition, voice and influence. Rural dwellers felt that they were forgotten in constitutional discussion, that people in Belfast are asked about such issues, not them.[17] Similarly, border-dwellers – although a minority of the population – were more immediately and gravely affected by constitutional change than others. Even when they were included in meetings, their particular concerns and experiences were not recognised. As one Southern border dweller described:

> down through the years when we went to meetings . . . in Dublin, or further afield, and basically, there was a huge feeling that you were actually from the north [ie. Northern Ireland] . . . [They had] absolutely no idea . . . where the border was, . . . we always felt Drogheda was kind of like the line, if you know what I mean, that when you live north of Drogheda, that really there was the feeling that you were from the north.

Emotional: where negative emotions deter participation. These emotions were complex, they varied between participants and were more often referred to than directly expressed. We do not attempt to give precise categorisations but rather to characterise the general tenor of worry and concern.[18] First, there was reference to intense emotions occasioned by violence. Some of the border respondents spoke of fear, of the trauma of the past and the difficulty of talking about it, and how they all feared reopening questions they thought had been resolved with the GFA.[19] For example, some of the women's group participants spoke of the difficult memories of the past, the risk of people getting upset or angry in discussions and the need for a supportive environment to help manage these feelings. As one woman put it, 'if the genie comes out of the bottle, you have to be able to deal with it'.[20] There was also a suggestion that any process of popular participation and deliberation would need to consider the impact the 'Troubles' had on some families, and 'the heartache' they experienced.[21]

Second, interaction with government provoked a mix of emotions of disillusion, fatigue and frustration. One migrant asked why they should participate if it was not going to have an effect given their lack of a vote. Some women pointed out that they had been asked about similar issues before and their responses were just filed away in some cabinet. Some felt that they were being asked only so that government or researchers could tick boxes, and that their input would have no impact.[22] Some of the women and gender activists had been to many government and NGO-sponsored meetings, to little avail: 'in the border counties we've been having these conversations for years and really good ones . . . but there is a sense that, oh look, they've all come to the border again to question us'. Though they agreed that women's groups would always want to have input, they questioned, 'But it's to what end? Where's it going to or what difference will it make?'[23] The sense that their views were accorded no official value was frustrating and also insulting. Occasionally participants were angry at us when it seemed we too were going to leave with no follow-up – 'Is that it?', they asked.[24]

Third, a mix of anxieties and worries about intergroup relations centred on issues of misrecognition, stigmatisation, humiliation, mistrust and the desire not to treat others in that way. Sometimes it was the identity-related loss that would result from a united Ireland:

> my heart does come into it as well . . . to suddenly . . . say that you're now part of a different culture, all of those things, I would find it very strange and I would feel like I had lost part of myself.

This unionist respondent, however, explicitly prioritised the practical costs of a united Ireland which they saw as decisive, over the identity sensitivities. Sometimes it was misrecognition between North and South. Young people who had gone to college in the other jurisdiction noted the ways they were misunderstood or stigmatised in that jurisdiction.[25] Southern border participants reported resentment from the North 'they will ask, where were you in the war?' And there was also mistrust far away from the border: one participant in the South-west said that they never talked about constitutional issues because 'It's quite simply a matter you don't know who you're talking to, so you don't talk about it'.[26]

Discursive: By far the most frequent obstacle mentioned by our participants was language, in its various forms. Many participants said the language of constitutional discussion, the very mention of 'constitution' or even worse 'Irish unity', evoked traditional ideologies and identities that many people are disengaged from or positively reject. It is

not simply unionists whose identity as British or Northern Irish is threatened by the prospect of a united Ireland. It is also people who have moved away from unionism and nationalism and defined themselves in other ways who are put off by a discussion which is framed in traditional unionist or nationalist terminology.[27] Many participants suggested it is necessary to 'change the language', to 'move away from binary politics' and to instead 'ask people what concerns them'.[28] Against our expectations, many politicians concurred with these views of grassroots participants, perhaps because the politicians were well aware of what many of their constituents thought.

The problem was that the language was 'abstract' and 'ideological' rather than focussing on 'organic issues of connection' and 'shared experience'. For example:

> Sometimes when I hear people talk about, from the Irish perspective, talk about a united Ireland, it almost strikes me as, it's a very ideological discussion. That doesn't really cut the mustard. You've people going, oh yes, absolutely, and they've no sense of what the reality or the practicality of the lived experience is like, or would be like . . . or even how those conversations or those statements affect the lived reality of people in Northern Ireland and the border regions.[29]

The language of constitutional discussion forced choices between a united Ireland and the United Kingdom, thus provoking 'knee-jerk' responses, rather than opening up the issue for discussion. Some border participants pointed to the need for a 'pre-conversation', on the issues that were affected by constitutional decisions, so as to focus on shared experience and issues of benefit to all. They mentioned in particular issues of health and education.

Against our expectations, some reasons for non-participation highlighted in the literature were hardly mentioned. Some participants in focus groups and interviews said it was necessary openly to discuss identity concerns that people may have. But none of our respondents, including unionists, saw identity as the primary issue of importance in constitutional discussion. This relative lack of emphasis on identity – even for women from loyalist areas – was unexpected given the focus on identity politics in contemporary unionism. Though resources were discussed as important and economic deprivation was mentioned as an obstacle to participation, such concerns were not top of mind for our participants, even for those who worked with economically marginalised groups. For our participants, information was valued, but the lack of information was seen as a reason for intensive deliberation and discussion, rather than an obstacle to it. Finally, there was no evident mistrust of experts, as might have been expected if 'populist' views had been widespread. Instead, our participants called for 'unbiased', expert information. If we had interviewed different participants, they might have emphasised identity, deprivation and/ or mistrust of experts as obstacles to their participation in debate.[30] Our research does not show that these obstacles are unimportant. It does show that there are important and widely experienced obstacles to participation beyond these commonly cited factors, and that they affect a very wide tranche of the population.

On ways forward: Practical suggestions for enhancing engagement

Our research participants spoke about how a process of discussion and deliberation might ease or avert the obstacles to participation they had noted. We identify four suggestions of a way forward that may enhance engagement on the part of 'other' voices: the provision of unbiased information on potential constitutional change; building accountability

into the process; the need for extensive discussion and the need for constructive 'conversation' rather than divisive 'debate'.

First, participants called for unbiased information. They frequently commented that nobody knows what a united Ireland would look like. Some highlighted the dangers of proceeding towards a referendum without 'proper information' and without 'thinking through the consequences' as occurred with Brexit. Several said that the various constitutional options must be 'researched properly', including work by academics and civil society before 'putting flesh on the bones'. Second, participants argued that there needs to be accountability. The discussion has to have a purpose and impact for citizens, not lead to reports 'stuck in filing cabinets'. Suggested ways to enhance accountability included citizens' assemblies, civic forums and academic research. Third, there was a clear view that any process of constitutional change would require far-reaching discussion and participation based on 'rational constructive debate'. Comments included: 'Take the time . . . Let people discuss the issue, make sure there is lots of deliberation before any vote'. Some participants were adamant that there had to be widespread participation, not just one citizens' assembly but citizens' assemblies in every county, with the result of each fed into the next, in rural as well as urban localities. Fourth, participants emphasised the need for open-ended 'conversations' around constitutional issues, rather than divisive 'debates' over binary options that risked knee-jerk responses. This could be read as a hope of reciprocal 'listening out' so that emotions can be recognised and reasoning understood (cf. Curato, 2019: 10).

Significance for scholarship on constitutional processes

Our findings show the many and varied barriers to participation in constitutional discussion at the important first stage, when ground rules are being decided, basic principles defined, and choices outlined. In divided societies, these barriers include but go far beyond the lack of economic and educational resources of disadvantaged sectors of the population. They include what we call *situational* obstacles relating to the specific resources of time (particularly relevant for working parents and single parents); channels of communication with policymakers which do not always reach to rural areas; resources of legitimation (migrants are not perceived to have legitimate voice); and resources of recognition (when border-dwellers or others are misperceived, formal inclusion is worthless because one's views cannot be voiced so as to be heard). Barriers can also be *emotional*. They include the disillusion that accompanies long experience of formal consultation without impact and the sense of potential stigmatisation that makes constitutional discussion difficult to negotiate. However, protection of 'identity' – a concern often mentioned in literature about the difficulties of change in ethno-nationally divided places – was not central for most participants. *Discursive* barriers to involvement, particularly the framing of questions and issues for discussion were highlighted as problematic and liable to disincentivise participation among the undecided and open-minded.

Many of these barriers are underemphasised in the existing literature on popular participation and deliberation in constitutional processes.[31] Recognising the varied range of barriers is important, because they require different sorts of procedures to counter them. *Situational obstacles* can be partially resolved by multi-levelled arenas of deliberation, making it easier for those with limited resources to participate. For example, the exclusion of migrants who feel they should not speak because they cannot vote could in principle be countered by providing votes for all permanent residents, as was done in the

Scottish independence referendum. This would be a radical move, but one that should be discussed. Exclusion of women and rural dwellers could be countered by specific 'affirmative action' measures to provide arenas and resources that encourage participation, and multiple local deliberative forums.

Some *emotional barriers* require carefully managed conversations to tease out sensitivities and allow them to be discussed productively. There is a growing literature on how deliberative mini-publics may facilitate a process of empathy with others (Johnson et al., 2019; Suiter et al., 2020); how participative deliberation can turn emotions into positive resources (Curato, 2019); how transversal access and narratives can allow mutual understanding and common projects even among those from conflicting political groups (Yuval Davis, 1999) and, as in our own work, how partnership with local community organisers, for example, women's groups, can help productive dialogue. However, some emotional barriers – in particular the disillusion, jadedness and consultation fatigue which we found – require a thorough reform of policy channels to show that participation can make a difference in policy formation. And some emotional barriers must be countered by direct intervention in the problematic political context that generates fear in the present, not just in the past.

Finally, our participants emphasised *discursive barriers* to participation. It is not that they failed to understand constitutional language or were incapable of dealing with the complexity of constitutional detail.[32] Their concerns were in part that the language could act as a trigger for political polarisation; a similar concern has been noted in other contexts and there is evidence that deliberation, once triggering party-political language is removed, can reduce polarisation (Fishkin et al., 2021). But their concerns also went beyond a worry about polarisation. They felt unable to deal with more important issues in a debate framed around set political options – a united Ireland or United Kingdom, the timing of referenda, an integrated united Ireland or continued devolution. They were less interested in institutional design than in the ground-rules of discussion and principles underlying constitutional change: for example, good governance, civil interaction, a better politics and better social conditions. Our participants gave particular readings to those principles (often emphasising 'bread and butter' issues), but the central point was the need for deliberation that opened the principles to discussion. *Discursive exclusion* needs to be countered by changing the questions, reframing deliberation to begin with what one participant called a 'pre-conversation', disaggregating the issues at stake, and beginning with people's concerns. It involves adding to the constitutional agenda the 'bread and butter' issues which affect daily life, and the defining vision and values that might motivate decisions. Our research shows that there is appetite in both jurisdictions to combine these themes.

Our findings suggest that in deeply divided societies, very wide participation stands to reorient constitutional discussion away from divisive identity politics to pragmatism and principle. Participation should, in turn, be deliberative: ordinary people want 'unbiased information' for their discussions. Most radically, ordinary citizens want deliberation about the agenda for discussion and the principles that govern it, not simply about institutional options. And that deliberation should be cross-cutting and iterative, linking together diverse groups.

This has important policy implications for the Irish case. Existing scholarship on current constitutional discussion in Ireland has focussed on deliberative mini-publics. Two small mini-publics have so far been conducted on the constitutional question, one in Northern Ireland and one in the Republic of Ireland (Garry et al., 2020, 2022a). They

were primarily concerned with institutional arrangements in a possible future united Ireland – an integrated state or Northern Ireland as devolved. Expert presentations of institutional options were provided, and participants were offered a choice, as in a deliberative poll. They demonstrated public capacity to deliberate on constitutional preferences, even when they deeply disagreed on them, and public willingness to change some of their initial views.

Our research adds an explicit emphasis on participation, which takes account of the multiple axes of marginalisation and the need to counter the 'supply side' problems of low resources and high sensitivities.[33] This requires opening up the constitutional agenda to explore what the widest variety of participants perceive as the priority issues, and doing so in a range of modes, not simply mini-publics, but also deliberative cafés and local deliberative forums, to access those who otherwise opt out.[34] Such deliberation over the terms and principles of debate can feed into deliberations on constitutional models as practised by Garry and his colleagues. Together they will provide the information necessary to allow detailed political negotiations and legal drafting to resonate with the implicit values and expectations of the population.

Suiter's (2021) proposals also prioritise inclusive deliberation on the political agenda and public priorities, leading on to deliberation on cross-cutting 'bread and butter' issues where there are shared interests, and over time building up to properly constitutional deliberation. She argues for separate spheres of deliberation, North and South, to build trust between divided communities in Northern Ireland before connecting with the South. Our research revealed an appetite for cross-border discussion in both parts of the island. We found that identity divisions are less of a stumbling block even for some unionists than unionist rhetoric suggests. It follows that the deliberative agenda may more quickly move from experiential to constitutional issues than Suiter suggests, particularly if transversal (gender, generation or community) networks are used across the island.

Accountability and political will are central. Obstacles to participation are also on the political and official 'demand-side'. Political commitment to participation in each Irish jurisdiction was ambivalent at best. The channels of policy making were thin, and the design of constitutional options and questions for deliberation, by politicians and experts alike, tended to be top-down, presuming rather than problematising the crucially important ground rules and fundamental values that should underpin constitutional discussion. We have noted the interest among some officials and politicians in integrating grassroots views into policy. It is necessary to widen and strengthen the existing institutional channels whereby policy constraints can be fed down from official, political and expert levels to local level, and whereby critiques based on experience can be fed back up. An important issue for further research is how to link together different forms of popular participation, deliberation and policy making across states and borders.[35]

More generally, our analysis shows the wide-ranging barriers to participation, in particular at the important early stages of discussion, and the approaches necessary to overcome them and thereby to avoid some of the unexpected turns which have accompanied other constitutional processes. In the Brexit referendum, for example, the government lost sight of the resentments and hopes of large sections of the population; in the Chilean case, it appears that the more committed dominated a constitutional process later overturned by public vote; meanwhile in Tunisia the pursuit of inclusion has been mired by elite dominance. Our findings point to the value of inclusive, participatory deliberation in the early stages of a constitutional process, both for pragmatic reasons – to avoid such destabilising upsets – and for normative reasons – so that public views can develop and constitution making can resonate with them.

Conclusion

In this article we addressed a key challenge for participatory constitutionalism: the difficulty of achieving popular participation in the early 'upstream' stages of a constitutional process when it is most likely to be impactful. This is particularly difficult in deeply divided and post-conflict spaces, especially with regard to individuals and groups outside the main ethno-political groups. Our extensive qualitative study uncovered the principal obstacles to their participation in constitutional discussion. The main obstacles which we categorised as situational, emotional and discursive are general, but exacerbated and intensified in divided societies. We have suggested ways in which these barriers might be addressed in the Irish case.

The research findings are significant for the wider literature and for international practice on constitutional processes, especially in divided societies. Our findings point to the value of inclusive, participatory deliberation in the early stages of constitutional discussion when what matters is less institutional detail than the shape of the process and the rules and principles that should guide the process. As the principles and agenda are articulated through the widest possible participation, public deliberation on the best institutional models and constitutional options becomes essential. Logically, agenda setting discussion is primary. Practically, the precise sequence may be less important than the need for both sets of exercises and for linkages between them. Our findings also have significance for policymakers attempting to shape an inclusive and conciliatory process of constitutional discussion. Future research on inclusive, participatory constitutional discussion should investigate existing policy making channels that link politicians, experts and grassroots and show ways to strengthen and widen them.

Designing an inclusive and effective constitutional process needs to start with the question of how best accommodate the diversity of voices. Accommodating such diversity will involve well-designed popular participation and deliberation that opens the very ground rules of debate to discussion, and that is widely accessible. It will also involve quite radical changes in procedures of policy making and consultation.

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Notes

1. For discussion of the democratic value of participation and its relation to deliberation, see Cohen (2009). For forms of deliberative participation, see Curato (2019).
2. To avoid confusion, the term Ireland is used only for the island; Northern Ireland and the Republic of Ireland are the terms used for the two jurisdictions on the island.
3. See Reuchamps and Suiter (2016). Participation is not limited to deliberation, and deliberation is not limited to mini-publics, but since mini-publics have become so important in deliberative practice it is important to assess the limits they may impose on participation.
4. For a discussion of the uncommon instance of mini-public open agenda-setting in the case of the G1000 citizen summit in Belgium, see Caluwaerts and Reuchamps (2015).

5. For assessments of the Irish cases, see Farrell (2022), Field (2022) and Mockler (2022). While Field shows that citizens' assemblies have increased the inclusion of women's issues in deliberation, Mockler shows that within the deliberation there is uneven uptake of the ideas put forward by politicians and citizens, men and women; and Farrell discusses the limits of agenda setting and follow-through.

6. The convening of popular referendums, one in each jurisdiction, on the question of constitutional change would take place when the Northern Ireland Secretary of State considers there to be majority of support in Northern Ireland for change.

7. Northern Ireland voted 56% to remain within the EU. The UK decision to leave precipitated renewed calls for discussion on Northern Ireland's constitutional future, given the prospect of a hard border on the island followed by the outworkings of the Ireland/Northern Ireland Protocol.

8. We do not suppose that the heightened debate will necessarily lead to a united Ireland, but we think it valuable to encourage engagement so that the discussion articulates principles and groundrules that will be valid for any future constitutional outcome.

9. See DFAT Reconciliation Fund: dfa.ie/reconciliation and Department of the Taoiseach Share Island Unit. https://www.gov.ie/en/campaigns/c3417-shared-island/?referrer=http://www.gov.ie/en/publication/de9fc-shared-island/#. Our research was supported by both.

10. Representatives of all major and minor parties were interviewed with the exception of the DUP in Northern Ireland – who did not respond to our invitations to interview – and some of the smaller loyalist and republican groups.

11. We thank our Research Assistants Sarah Curristan and Dyuti Chakravarty for their work in coding the data in NVivo.

12. These categories are not exclusive. The same situation can limit resources for participation, evoke emotions and make conventional language inappropriate.

13. Rural women's focus group.

14. Cross-border youth group.

15. Migrant focus group.

16. Migrant focus group.

17. Cross-border women's focus group.

18. Important recent work on emotion in politics range from the precise characterisations of Petersen (2002) and Demertzis (2013); to the ethnographic descriptions of Curato (2019); to the more general distinction between positive and negative emotions in Dornschneider (2021). In the brief space available, we attempt to give an ethnographic sketch of the feelings.

19. Although very important, the fear of overt violence was relatively seldom mentioned among our respondents.

20. Cross-border women's group.

21. Cross-border women's focus group.

22. Variously Northern women, migrants, border women, Southern women.

23. Cross-border women's group.

24. In fact we did follow up with other events and a policy workshop, not discussed here.

25. Cross-border youth focus group.

26. Women's focus group; also interview with migrant. The potential problems come from the coexistence of strong republicans, anti-republicans, English residents and Southern Protestants in parts of this area.

27. Many participants said this: Northern women, border women, Green, SDLP, PBP, APNI and unionist politicians.

28. Politicians, Green, PBP, Unionist, SDLP. Southern border group, women.

29. Border women's focus group.

30. These are, for example, themes emphasised by loyalist politicians in Northern Ireland.

31. They are more often mentioned in the feminist literature, see Ashe (2022a, 2022b). Our research shows that concern about these issues is widespread, encompassing youth, migrants and gender activists as well as women.

32. These are reasons that Horowitz (2021) among others uses to argue against widespread participation in constitutional debate, that is, the idea that public participation invites extremist input, rendering compromise more difficult.

33. In this, it coheres with some feminist perspectives, see Ashe (2022b).

34. For forms of deliberation some of which prioritise inclusion and participation over representativeness, see Cohen (2009), Parkinson and Mansbridge (2012) and Curato (2019).

35. For possible interlinkages, see Parkinson and Mansbridge (2012); for the use of a 'system' approach in Northern Ireland, see Suiter (2021). On an island wide basis, this is likely to need considerably more

British-Irish coordination than has existed since Brexit, see Kelly and Tannam (2022). For a radical democratic approach emphasising participation, and the interlinkages between different forms of local democracy and policy making, see Cohen (2009).

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