

Testing the Limits of Deliberative Constitutionalism

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On 14th December 2023, a parliamentary committee in Ireland issued a [report](#) recommending a referendum on inserting environmental rights, including rights of nature, into the Irish Constitution. The origin of those recommendations was the prior [Citizens' Assembly on Biodiversity Loss](#), which was formally linked to the committee. These events are another important chapter in the unfolding story of [deliberative constitutionalism](#), with Ireland often cited as a [leading example](#). The fate of the constitutional reforms proposed by the Assembly and the committee on environmental rights will provide important insights into: 1) when deliberative recommendations can gain the necessary political support for implementation; 2) whether institutional design can improve the likelihood of political support for citizen-led constitutional reform.

Ireland's Deliberation on Biodiversity Loss

Ireland has been on a deliberative journey in respect of policy change and constitutional reform to respond to biodiversity loss. Dáil Eireann (the lower house of the Irish legislature) declared a [National Climate and Biodiversity emergency](#) on May 9th, 2019, with Ireland only the second country in the world (after the UK) to do so. At this juncture, one of the major parliamentary parties, Fianna Fáil, called for a [Citizens' Assembly on biodiversity](#), which was supported by the Green Party.

Thereafter, the Citizens' Assembly on Biodiversity Loss emerged from the [Programme for Government](#) agreed in October 2020 by a three-party coalition including both Fianna Fáil and the Green Party. The institutional design and operation of the Assembly broadly mirrored previous, high profile Citizens' Assemblies in Ireland, which generated constitutional reform proposals on issues such as [same-sex marriage](#) and [abortion](#) that were adopted via referendum. Broadly, the assemblies were composed of randomly selected citizens, sampled to secure descriptive representation of the wider population, who were brought together to hear from experts, deliberate, and issue reform proposals. Those proposals were then considered by politicians. The Houses of the Oireachtas (the upper and lower houses of the Irish legislature) passed legislation providing for constitutional referendums (the prescribed mechanism for constitutional change in Ireland) on each issue in 2012 and 2018 respectively.

However, the Biodiversity Loss Assembly differed from its predecessors in being a 'single-issue' assembly. It spent five weekends exclusively on biodiversity loss, in addition to holding a stakeholder engagement meeting and innovative biodiversity field-trips. The Assembly's composition also differed significantly from previous

assemblies. For the first time, registration for voting in Ireland was not a requirement for participation. Rather, all those resident in Ireland were in principle eligible, with recruitment conducted by sending letters of invitation to all households in Ireland. A [sampling process](#) was then applied to identify a representative pool of 99 lay participants from amongst the positive responses. The assembly was chaired by an academic, who was the 100th member of the body.

Constitutional Reform Recommendations

The [final report](#) of the Biodiversity Loss Assembly was published on 5th April 2023, containing 159 recommendations that were approved by the citizens through a majority vote. The recommendations were wide-ranging in nature, including policy recommendations and, somewhat surprisingly, constitutional reform recommendations. The Assembly recommended by a vote of 83% in favour that a proposal to amend the Constitution to protect biodiversity should be put to the people in a referendum. The Assembly recommended that it should include:

- a. Human substantive environmental rights, e.g. a right to a clean, healthy, safe environment; a right to a stable and healthy climate; rights of future generations to these or other environmental rights. (82% vote in favour)
- b. Human procedural environmental rights, e.g. the Aarhus rights regarding access to environmental information, public participation in environmental decision-making and justice in environmental matters. (77% vote in favour)
- c. Substantive rights of nature, recognising nature as a holder of legal rights, comparable to companies or people e.g. to exist, flourish/perpetuate and be restored if degraded; not to be polluted/harmed/degraded. (74% vote in favour)
- d. Procedural rights of nature, e.g. to be a party in administrative decision-making, litigation, etc. where rights are impacted/likely to be impacted. (78% vote in favour)

The report stated the citizens' aims in making these recommendations as being: 'to attempt to ensure that nature is protected enough to continue to provide people with necessary ecosystem services, such as food, clean freshwater and air, and to allow people to access and enjoy a clean, safe and healthy environment, both now and into the future.'

Political Response

The [terms of reference](#) of the Assembly provided that the report would be referred to a relevant committee of both Houses of the Oireachtas for consideration. This followed the approach taken in the previous Citizens' Assembly on both climate action and abortion, where recommendations from citizens were considered in detail by parliamentary committees in an example of what Carolyn Hendricks

terms [‘designed coupling’](#) between deliberative innovations and standard political processes. The Assembly’s report was duly considered by the 14 member cross-party Joint Committee on Environment and Climate Action, which held further stakeholder engagement sessions and issued its [final report](#) on 14th December 2023. Amongst its key recommendations was that the Government should begin the preparatory steps to consider one or more referendums to protect biodiversity through the incorporation of the rights of nature and/or the right to a healthy environment into the Constitution within the lifetime of the current Dáil. It stated that an expert group should be established and resourced to draft the relevant constitutional amendment questions. It pointed to the inclusion of rights of nature in [Ecuador’s Constitution](#) in 2008 in support of this recommendation. However, the wider political response to the report was more mixed. For example, rural TD’s (elected representatives in Ireland’s lower house) came out strongly against the report as a whole, suggesting that the recommendations showed manipulation of the Assembly by government, with one TD going so far as to call it [‘a roadmap to rural and agricultural ruin’](#).

Next Steps?

The Assembly’s recommendations on constitutional reform now have the political imprimatur of the support of a parliamentary committee. This makes for a very interesting test-case on the political reception of constitutional reform recommendations issued by government-established citizens’ assemblies. At least two types of impact are discernible from the Irish experience: first, strong political impact, with citizens’ recommendations leading to successful referendums, as with same-sex marriage and abortion; second, very weak or no political impact, with recommendations being largely ignored, for example the recommendations of the 2012 Convention on the Constitution on [economic, social and cultural rights](#). In respect of this second category of recommendations, Oran Doyle and I have observed [elsewhere](#) that political support is critical for the advancement of recommendations of citizens’ assemblies, and that such support is generally weak in respect of complex constitutional reform proposals that would insert new language into the constitutional text, particularly where such language might have public expenditure implications.

However, the ‘designed coupling’ between the Citizens’ Assembly that considered abortion reform and the subsequent [all-party committee on abortion](#) was a notable feature that was lacking in respect of previous constitutional reform recommendations that were shelved by governments. The fate of the Biodiversity Loss Assembly’s recommendations will provide important insights into whether ‘designed coupling’ is effective in ensuring the necessary political support for assembly recommendations, or whether some recommendations are so unpalatable from a political perspective that even coupling to an intervening committee cannot facilitate the necessary consensus building. It will also be interesting to observe the significance of the Green Party’s current government position in shaping the influence of the Biodiversity Loss Assembly’s constitutional reform proposals, with

that position potentially providing the political impetus necessary to drive them forward.

Ireland is currently completing a [complex and contentious process](#) to formulate wording for a constitutional referendum on a [right to housing](#). This reform proposal has a deliberative basis in the recommendations of [the 2012 Convention on the Constitution](#). Ireland will also hold a [referendum on International Women's Day in 2024](#) on inserting a provision on the value of caring work into the constitution and a reform of the constitutional definition of the family, which proposals emerged from the [Citizens' Assembly on Gender Equality](#). The published referendum questions have proven contentious, with the wording that is to be put to the people [criticised](#) as a significant dilution of the citizens' recommendations. Against that backdrop, it may be doubted whether there will be political energy and appetite to take on another complex constitutional reform proposal within the lifetime of this government, notwithstanding its deliberative roots. This raises the possibility of another shelved citizen-led recommendation on constitutional reform, this time on high-profile environmental issues. Such a shelving could undermine support and trust in the overall deliberative project that Ireland has embarked upon since 2012, and could weaken the international perception of Ireland as a [gold-star example](#) of deliberative constitutional reform in action.

