numero 1/2024

costituzionalismo britannico e irlandese

Osservatorio irlandese

ISSN 3035-1839
DOI: 10.69099/RCBI-2024-2-02-C3A

A 'Plebiscitary democracy'? Popular Sovereignty and Political Process Review in Ireland

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n. 2/2024

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Abstract (ITA): Il contributo si propone di indagare il ruolo fondante della sovranità popolare nell'ordinamento costituzionale irlandese, concentrandosi in particolare sul frequente e peculiare uso dello strumento referendario. Dopo i necessari cenni di carattere storico, si vaglieranno le principali conseguenze costituzionali interne e le implicazioni nei rapporti con gli ordinamenti esterni della particolare concezione di sovranità popolare, sottolineandone i pregi ed evidenziano le criticità.

Abstract (ENG): The paper aims to investigate the foundational role of popular sovereignty within the Irish constitutional system, focusing in particular on the frequent and distinctive use of the referendum instrument. After providing necessary historical background, the paper will examine the main internal constitutional consequences and the implications for relations with external legal systems stemming from the conception of popular sovereignty, highlighting both its strengths and its criticisms.

Parole chiave: Irish constitution, sovranità popolare, referendum.

Keywords: Costituzione irlandese, sovereignty within, referendum.

Sommario: 1. Introduction and overview; 2. Popular Sovereignty as (i) Foundational Basis and (ii) Active Constituting Principle of the Irish Constitutional Order; 3. Popular Sovereignty and the Irish Constitutional Imaginary; 4. Political Process Review in Ireland; 5. Conclusion.

1. Introduction and Overview

Popular sovereignty is regularly described as the 'cornerstone' of the Irish constitutional order. It serves both as (i) the foundational basis for the constituted structure of the Irish state and as (ii) an active 'constituting' mechanism within the functioning of this state structure – with the Irish people as a collective being regularly called upon to vote in referendums addressing significant issues such as same-sex marriage, abortion rights and Irish participation in the process of European integration[1].

Case-law, academic commentary and the official rhetoric of state bodies constantly affirm the sacrosanct status of the popular will – which, in a formal sense at least, is understood to be unconstrained, i.e. not bound by limiting constitutional principles requiring respect for human dignity or any other type of foundational norms. Furthermore, multiple different aspects of the Irish constitutional system – including the design of the national electoral

* Contributo sottoposto a *double blind review*.

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[1] In this paper, 'popular sovereignty' is understood to mean a collective process of self-rule, whereby the people of a state territory are conceptualised as a unitary political entity and asked to engage in what Grewal and Purdy have described as «majoritarian process of formal univocal constitution-making» – whereby «a popular majority qualifies as speaking for "the people" as a whole by satisfying certain procedural criteria for proposal and amendment». D.S. Grewal, J. Purdy, *The Original Theory of Constitutionalism*, vol. 127, n. 3, 2017-8, in *Yale Law Journal*, p. 682.

system, its separation of powers structure, the state's formal legal relationship with the EU and other supranational legal structures, and judicial approaches to constitutional interpretation – are all based upon the assumption that primacy should be given to the collective will of the *demos*, as channelled through constitutional text and the referendum process. As a leading Irish judge has put it, Ireland is a «plebiscitary as well as a parliamentary democracy»[2].

This contrasts in interesting ways with the design, value system and normative self-understanding of certain other European democracies[3]. For example, in contrast to Germany, there are no limits to the popular power to approve amendments to the Irish Constitution and thus no 'eternity clause' in the constitutional text or any legal doctrine of 'unconstitutional constitutional amendments' to constrain the free exercise of the popular will. The Irish Supreme Court has concluded that proposals for constitutional change which have been approved by a popular referendum vote cannot be challenged on the basis they do not conform to fundamental constitutional values[4]. On the other hand, in contrast to the UK, sovereignty is vested in the people at large, instead of the elected legislature – which in Ireland is a constituted organ of the state, subject to the fundamental rights and separation of powers provisions set out in the popularly endorsed constitutional text and enforced by judicial review, with no power to amend that text unless the general public approve an amendment proposal by a referendum vote. In Ireland, the *voluntas populi* is truly the highest law, once given constitutional articulation[5].

Reflecting this emphasis on popular sovereignty, the Irish courts have developed a relatively robust 'political process' jurisprudence – which is primarily concerned with protecting the free and equal exercise of voting rights and protecting the procedural integrity of the democratic process. Relevant judgments include *Doherty v Government of Ireland* (breach of constitutional duties caused by a failure to hold a by-election within a reasonable time)[6], *King v Minister for the Environment (No 2)* (unconstitutional to exempt political parties from a legislative requirement imposed on independent candidates to be nominated by thirty named members of the electorate)[7], *O'Donovan v Attorney General* (a clear difference in population size between electoral constituencies will breach the requirements of Article 16

[2] J. HOGAN, in *Doherty v Referendum Commission* [2012] IEHC 211, at para 21: see Paragraph 3 below for further discussion of this quote.

[3] See more generally C. O'CINNEIDE, *Irish Popular Sovereignty from a Foreign and Comparative Perspective*, in C. O'MAHONY, M. CAHILL, C. O'CINNEIDE (eds.), *Constitutional Change and Popular Sovereignty*, London, Routledge, 2021, which is the original textual basis for much of Paragraph 2 and 3 of this paper.

[4] *In re Article 26 and the Regulation of Information (Services outside the State for the Termination of Pregnancies) Bill 1995* [1995] 1 I.R. 1.

[5] See A. KAVANAGH, *Unconstitutional Constitutional Amendments from Irish Free State to Irish Republic*, in E. CAROLAN (ed.) *The Constitution of Ireland: Perspectives and Prospects*, London, Bloomsbury, 2012, pp. 331-354. Kavanagh notes that the first Irish Constitution – the 1922 Constitution of the Irish Free State – was essentially hollowed out through unconstrained use of the *legislative* power to amend its provisions. As discussed below in Paragraph 2, this was one reason why the constitutional amendment power is now vested in the people at large, through the referendum procedure provided for in Articles 46 and 47 of the 1937 Irish Constitution.

[6] [2010] IEHC 369.

[7] [2007] I IR 296 (SC).

of the Constitution)[8], and *McMahon v Attorney General* (absolute secrecy of the secret ballot must be maintained)[9].

Reflecting the central importance of the referendum process to the Irish constitutional order, the Irish courts have been particularly interventionist in protecting the formal integrity of this specific voting mechanism. In a string of cases concerning the conduct of constitutional referendums, beginning with *McKenna v An Taoiseach (No 2)* in 1996, the courts have held that the Irish government is not entitled to spend taxpayer's money on promoting a particular side in a referendum vote[10]. Instead, information on the issues at stake must be provided in a balanced and accurate manner by an impartial Referendum Commission – whose work is regularly subject to legal challenges.

However, the courts have also made it clear that they will only intervene in the referendum process to correct any perceived unfairness when there is a clear case on the balance of probabilities that the outcome of the vote has been affected[11]. In addition, it should also be noted that the Irish courts have granted the Oireachtas (the Irish Parliament) considerable leeway when it comes to decisions about widening the franchise and improving effective access to voting facilities – sometimes to a questionable degree[12]. The courts have also not developed much in the way of a substantive political process jurisprudence, concerned with protecting minority rights, clearing blockages in the political system and the like. Instead, their focus in this regard tends to be essentially procedural in character. It is focused on protecting the formal integrity of the popular voting process, rather than venturing forth on a wider crusade to reinforce the health and general well-being of Ireland's democratic culture[13].

This reflects a wider reluctance on the part of the Irish courts to push the boundaries of judicial review in general. For the most part, they view their constitutional role as facilitating the democratic process and giving effect to the popular will as manifested though the text of the Constitution and legislation enacted by the Oireachtas – rather than securing respect for an amorphous set of underlying fundamental values. In other words, as Casey and Doyle have recently put it, the Irish courts regard the purpose of constitutional interpretation as «effecting the will of the People expressed through the Constitution» – and generally tend to treat the constitutional text as a «higher law» laid down by an act of popular sovereignty, rather than as a «charter of moral commitments»[14].

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[8] [1961] IR 114.
[9] [1972] IR 69.
[10] [1995] 2 IR 10 (SC).
[11] See e.g. *Jordan v Minister for Children and Youth Affairs* [2015] IESC 33, discussed further below in Paragraph 4 of this paper.
[12] See e.g. *Draper v Attorney General* ([1984] *IR* 277 (SC) (no obligation to provide postal votes for persons with disabilities) and *Breathnach v Ireland* [2001] 3 *IR* 230 (SC) (no obligation to provide postal votes for prisoners). See further Paragraph 4 below.
[13] D. Prendergast, *Article 16 of the Irish Constitution and Judicial Review of Electoral Processes*, in L. Cahillane, J. Gallen, T. Hickey (eds), *Judges, Politics and the Irish Constitution*, Manchester, Manchester University Press, 2017, pp. 252-268.
[14] C. Casey, O. Doyle, *Charter or Higher Law? The Constitution under the New Supreme Court*, vol. 44, n. 1, 2024, *Dublin Uni LJ*, forthcoming.

This is not to say that legal protection of fundamental rights, rule of law or separation of powers is weak in Ireland. The text of the Irish Constitution contains strong written guarantees in this respect. Furthermore, the role of the Irish courts in interpreting, applying and enforcing these guarantees through the exercise of judicial review is well established and not controversial. In exercising these powers of review, the judiciary have built up a robust framework of legal controls over time, through the incremental development of constitutional case-law. These controls are mainly focused on (i) protecting core civil and political rights and (ii) ensuring that the exercise of public power respects the constraints of the constitutional system of separation of powers. However, the primacy of the popular will, as expressed through constitutional text, remains the ultimate reference point – reflecting the historical legacy of Ireland's subjugation as a colonised territory, and the central role assigned to popular self-determination and the importance of democratic self-governance within the Irish constitutional imaginary[15].

Ultimate constitutional authority in Ireland is thus vested in the hands of the people at large, who have the final say over any disputed constitutional issue. If politicians dislike a court judgment, or otherwise wish to try and change the constitutional status quo, they can initiate a referendum process and give the population at large the chance to decide the issue in question. This has helped to ensure that the population at large have enjoyed direct democratic input into key decisions on issues such as same-sex marriage and abortion rights[16].

The referendum process also offers a way to involve the people at large in resolving issues of constitutional identity in a multi-layered European legal order. Indeed, Ireland has been troubled less than other European states by the concerns about democratic deficits and constitutional identity stemming from the influence exerted by EU law, in part because every significant expansion of EU competency since the 1980s has been approved by a referendum vote in Ireland – as required by the *Crotty v Ireland* judgment of 1987[17]. This makes it difficult to frame such decisions as elite, anti-popular impositions. As Cahill elegantly puts it, «the lasting impression is that those decisions have come about as a direct result of our decisive democratic participation»[18].

In general, the primacy of popular sovereignty to the functioning of the Irish constitutional order, as channelled through the referendum process, is viewed very favourably in Ireland – and has helped to make its constitutional system one of the most stable in Europe. Leading constitutional commentators like Eoin Carolan and David Kenny have argued that Ireland

[15] Ireland could be viewed as an early adopter of what Richard Albert has described as 'decolonial constitutionalism' see R. ALBERT, *Decolonial Constitutionalism*, in *U of Texas Law, Legal Studies Research Paper No. 8/20/2024-RDA*, August 20, 2024, available at SSRN.

[16] As discussed below, it also helps to reinforce the legitimacy of judicial review in Ireland, as all court judgments can hypothetically be reversed by a popular referendum vote. See O'CINNEIDE, *Irish Popular*, n. 3 above.

[17] [1987] IR 713. See also C. O'CINNEIDE, *Democracy, Sovereignty and Europe: The Contrasting European Trajectories of Ireland and the UK*, in *VerfBlog*, 2023/4/12.

[18] See the Introduction to Part 1 of M. CAHILL et al (eds.), *Constitutional Change and Popular Sovereignty in Ireland*, London, Routledge, 2021.

has developed a distinct 'referendum culture', whereby strong expectations exist that the public at large should have an opportunity to participate via the referendum process in determining complex and contested social issues – with such referendum initiatives now being usually preceded by the establishment of citizen assemblies and other consultative mechanisms[19].

Having said that, there are certain qualifications that need to be added to this picture. To start with, Ireland has not adopted Swiss-style direct democracy. The 1937 Constitution, unlike its earlier predecessor the 1922 Constitution of the Irish Free State, does not provide for a plebiscitary power of initiative[20]. Referendum votes can only be triggered by the Oireachtas passing a bill which provides for an amendment to the constitutional text to be put to a popular vote. This ensures that the government of the day can usually control which amendment proposals are put to the people[21]. At times, this can let to popular demand for constitutional reform being left unsatisfied – as happened for example in 2024, when a government proposal to insert new language relating to the provision of care in the home into Article 41 of the Constitution failed, due to a widespread perception that the new language lacked any tangible content.

Also, as is increasingly common across the liberal democratic world, Irish voters often feel a lack of connection with their elected politicians and the state structure more generally. This is despite the manner in which the Irish electoral system, which uses the single transferable vote (STV-PR) system, has been designed so to as to closely track popular preferences – and the way in which elected politicians in Ireland generally have strong personal connections to the local communities they represent. Now, as elsewhere, this sense of disconnection may reflect wider pattern of democratic disconnect, which may ultimately be traced back to exaggerated expectations about how the governance of highly complex state structures can and should function in the contemporary world. Also, public dissatisfaction with the functioning of the Irish democratic process is less than in many other similarly situated European states. However, it does should that constitutional affirmations of the importance of popular sovereignty, plus a well-developed 'referendum culture', is no easy cure for the current democratic/constitutional malaise that afflicts much of the world. Also, it remains to be seen whether the unquestioned primacy of the *vox populi* as expressed through constitutional form within the Irish constitutional order will continue to be as generally welcomed and acclaimed in the future as it is at present – and function as well as a salve for constitutional irritation as it has in recent years. As explored briefly in the

[19] E. CAROLAN, *Constitutional Change Outside the Courts: Citizen Deliberation and Constitutional Narrative(s) in Ireland's Abortion Referendum*, in *Federal Law Review*, vol. 48, n. 4, 2020, pp. 497-510; D. KENNY, *The Risks of Referendums: "Referendum culture" in Ireland as a solution?*, in M. CAHILL et al (eds), *Constitutional Change*, cit., pp. 198-223.

[20] As discussed in Paragraph 2 of this paper below, this aspect of the 1922 Constitution rapidly became a dead letter, along with many other of its more innovative provisions. For an overview of the birth, life and death of the 1922 Constitution, see in general D. COFFEY, L. CAHILLANE (eds), *The Centenary of the 1922 Free State Constitution*: *Constituting a Polity?*, Springer, 2004.

[21] This means that, as Eoin Carolan puts it, «the referendum is more likely to be the end point of a process of constitutional change rather than the vehicle or impetus for it»: E. CAROLAN, *Constitutional Change Outside the Courts*, n. 19 above. See also D. KENNY, *The Risks of Referendums*, also n. 19 above.

Conclusion of the paper, some potential legal tensions opened up in the 1980s and 1990s between the anti-abortion provisions inserted into the Constitution by a popular referendum in 1983 and the free movement and freedom of expression requirements of EU and ECHR law respectively. This could have generated an awkward debate about how popular sovereignty should be reconciled with the demands of EU and European human rights law. Now, as it happened, these particular tensions were addressed through political means – with later referendums ultimately eliminating the points of tension at issue. However, it is not impossible that other areas of contestation will open up in the future – and it remains to be seen how the Irish courts and other bodies will engage with such tensions as and when they develop.

For now, it is worth noting that the majority of the Irish Supreme Court concluded in the 2023 case of *Costello v Government of Ireland* that ruled that Ireland could not ratify the EU-Canada Comprehensive Economic and Trade Agreement (CETA) within the existing state of Irish law, as it would breach the principle of popular sovereignty to allow an international arbitration tribunal to make binding decisions enforceable in Irish law without intervening supervision by the relevant constitutional organs of the state, i.e. the Irish courts and legislature[22]. It remains to be seen how far the logic of this 'constitutional identitarian' position will be extended in subsequent cases[23].

In what follows, this outline is fleshed out with further detail. Paragraph 2 explores how popular sovereignty serves as the conceptual 'cornerstone' of the Irish constitutional order. Paragraph 3 examines how the centrality of the popular will to the Irish constitutional imaginary has influenced legal doctrine. Paragraph 4 analyses the evolution of political process review in Ireland, to illustrate the wider arguments made previously. The Conclusion draws together these strands of analysis, and outlines further the potential conceptual tensions that may lurk beneath the valorisation of the popular will within Irish constitutionalism.

2. Popular Sovereignty as (i) Foundational Basis and (ii) Active Constituting Principle of the Irish Constitutional Order

[22] [2022] IESC 44.

[23] O. DOYLE, *Trojan Horses and Constitutional Identity: Ireland's Supreme Court Holds up Ratification of CETA*, in *VerfBlog*, 2022/11/23.

In presenting the draft text of the Irish Constitution of 1937 (*Bunreacht na hÉireann* in Irish) to the lower house of the Irish Parliament (*Dáil Éireann*) in May 1937, the then Prime Minister *Taoiseach*) Eamon de Valera stated that «[i]f there is one thing more than another that is clear and shining through this whole Constitution, it is the fact that the people are the masters»[24]. This frequently-quoted remark well summarised the primary objective of the new Constitution[25]. It was designed to affirm that the Irish people were their own sovereign and democratic masters, and the ultimate source of authority for all constituted organs of the state. To reinforce this, the text of its Preamble, together with the provisions of Arts 1, 5 and 6, repeatedly affirm the sovereign status of the people as the source of all lawful authority – while the Constitution itself was put to the people and approved in a plebiscite in July 1937[26].

THE IRISH CONSTITUTION (1937)

ARTICLE 1

The Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government, to determine its relations with other nations, and to develop its life, political, economic and cultural, in accordance with its own genius and traditions.

ARTICLE 5

Ireland is a sovereign, independent, democratic state.

ARTICLE 6

1 All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.

2 These powers of government are exercisable only by or on the authority of the organs of State established by this Constitution.

The 1937 Constitution thus affirmed the foundational status of popular sovereignty within the Irish constitutional order. Its provisions assume that the people of Ireland constitute a unitary political entity, capable of deliberating and acting together to promulgate a

[24] 67 *Dáil Debates* Col.40, May 11, 1937: quoted by J.A. MURPHY, *The 1937 Constitution. Some Historical Reflections*, in T. MURPHY, P. TWOMEY (eds.) *Ireland's Evolving Constitution, 1937-97: Collected Essays*, Oxford, Hart, 1998, p. 13.

[25] Its predecessor, the Constitution of 1922, was similarly designed to affirm the principle of Irish popular sovereignty, while also establishing the institutional framework of the new Irish Free State. However, it was irrevocably tainted in republican eyes by the manner in which its provisions were made subordinate to the Anglo-Irish Treaty of 1921. See B. KISSANE, *New Beginnings: Constitutionalism & Democracy in Modern Ireland*, Dublin University College Dublin Press, 2011, pp. 28-56.

[26] In contrast, the 1922 Constitution formally derived its authority from legislation enacted by Dáil Éireann sitting as a constituent assembly (the Constitution of the Irish Free State (Saorstát Éireann) Act 1922), which was subsequently paralleled by legislation passed by the UK Parliament (the Irish Free State Constitution Act 1922) and brought into force following a royal proclamation issued on December 6, 1922.

fundamental law for themselves. This collective self-organisation is deemed to be the originating source of all legal authority, including that of the Constitution itself and all the various organs of the state it establishes and empowers.

This represented a decisive break with the British constitutional tradition, which treated legal sovereignty as vested in the constituted organs of the state – specifically the Crown-in-Parliament – rather than in the people as such[27]. The new Irish constitutional order essentially dethroned the British sovereign, both prospectively and retrospectively: not alone did the sovereign cease to play any residual role in the post-1937 constitutional order, he was also displaced as the primordial source of existing lawful authority and replaced by the popular will[28]. The newly established constitutional framework was not acknowledged to be an inheritance from the Crown: instead, it was conceptualised as something called into being by the constituent power of the people themselves[29].

But the role of popular sovereignty within the new post-1937 constitutional order was not just confined to serving as its originating source of legal authority. The Irish republican tradition had long embraced a Rousseauian concept of the popular will, with the Irish people conceptualised as a unitary political entity, capable of exercising non-delegable sovereign power[30]. Furthermore, this tradition also defined itself in opposition to the distant, mediated, elite-driven authority of the Westminster Parliament and the British Crown more generally.

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Indeed, from the first moment of Irish independence back in 1922, the architects of the new Irish constitutional order wished to do more than simply establish the constituted form of the new state on a popular sovereigntist foundations. They also wanted to establish a more permeable, immediate, persisting relationship between the constituent people and the constituent organs of state, and in particular the Oireachtas as the legislative branch, than had been possible under Westminster rule – while also keeping channels open for the direct exercise of popular sovereignty, through plebiscitary-style mechanisms.

This ambition is neatly encapsulated in a quote from Kevin O'Higgins T.D., the first Justice Minister of the newly established state, speaking in the 1922 Constituent Assembly (which approved the earlier 1922 Constitution which was later replaced by the 1937 Constitution): «[P]ersonal, actual contact between the people and the laws by which they are governed is

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[27] For the classic exposition of this idea, see A.V. DICEY, *Introduction to the Law of the Constitution*, ch. 1. 8th ed, London, Macmillan, 1915. For a discussion of Dicey's distinction in this respect between legal and political sovereignty, see J. KIRBY, *A.V. Dicey and English Constitutionalism*, in *History of European Ideas*, vol. 45, n. 1, 2019, pp. 33-46. For the later development of Dicey's views as to the potential for referendums to play a potential veto role within the functioning of the UK constitutional order, influenced in particular by his strong opposition to Irish Home Rule, see M. QVORTRUP, *A.V. Dicey: The Referendum as the People's Veto*, in *History of Political Thought*, vol. 20, n. 3, 1999, pp. 531-546; H. TULLOCH, *A.V. Dicey and the Irish Question 1870-1922*, in *Irish Jurist* (n.s.), vol. 15, n. 1, 1980, pp. 137-165.

[28] As Kissane puts it, the Bunreacht «sought to refound the state on the basis of first principles», with popular sovereignty being to the fore: B. KISSANE, *New Beginnings*, n. 25, pp. 76-77.

[29] De Valera's first draft of what became the Preamble to the 1937 Constitution contained the phrase «the people … give themselves this constitution fundamental organic law»: see B. KISSANE, *New Beginnings*, n. 25, p. 76.

[30] See D. FIGGIS, *The Gaelic State in the Past and Future*, Dublin, Manusel, 1917.

advisable in a country where the traditional attitude of the people is to be against the law and against the Government. The Referendum, we consider, will be a stimulus to the political thought and the political education of the people»[31].

This desire to close the gap between government and governed fed through into the design of the Free State Constitution of 1922. Many of its provisions were inspired by a desire to give direct or indirect expression to the principle of popular self-rule. In particular, it made provision for both constitutional and legislative referendums and a Swiss-style power of popular initiative[32].

However, these ambitions failed to translate into reality. The power to amend the Constitution conferred on the Oireachtas by the 1922 Constitution, originally time-limited, was used, in Cahillane's words, to facilitate the «dismantling of the entire edifice»[33]. The provisions establishing legislative referendums and the power of popular initiative were repealed, while the constitutional referendum mechanism was never triggered.

These popular mechanisms were not resurrected by the 1937 Constitution. However, the desire remained to ensure that the Irish people in general would continue to lay a direct and continuing role in constitutional governance. As a result, Articles 46 and 47 of the 1937 Constitution provided that constitutional amendments must be approved by referendum

AMENDMENT OF THE CONSTITUTION

ARTICLE 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.

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…

ARTICLE 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…

votes.

[31] *Dáil Debates* vol 1 col 1211 (5 October 1922).
[32] Articles 47, 48 and 50 of the 1922 Free State Constitution.
[33] See L. CAHILLANE, *Popular Sovereignty under the 1922 Constitution: Theory and reality*, in M. CAHILL et al, *Constitutional Change*, cit., pp. 22-36.

Furthermore, the single transferable voting system (STV) that had been used since 1922 was retained and embedded in Article 16 of the new Constitution, with the Oireachtas given a general power to regulate the details of its functioning.

In general, the 1937 Constitution made clear that popular sovereignty represented the foundational basis of the new constitutional order; that constitutional amendment required popular approval via referendum vote; and that the central purpose and function of the newly constituted state structure was to give effect to the will of the people, as expressed via the constitutional text and legislation generated by the Oireachtas elected in line with the requirements of Article 16.

3. Popular Sovereignty and the Irish Constitutional Imaginary

The idea that popular sovereignty constitutes the foundation of the Irish constitutional order, and should remain active within its functioning, exerts a significant influence on other features of Irish law and politics – and the Irish constitutional imaginary more generally[34]. In particular, the idea that it represents the highest expression of democratic will-formation has exerted a powerful influence over (i) the constitutional jurisprudence of the Irish courts and (ii) attitudes towards the representative/political organs of the state in particular, i.e. the legislature and executive.

To start with, popular sovereignty features as the ultimate trump card within the constitutional case-law of the Irish courts. The Supreme Court has been at pains to emphasise how all power exercised under the Bunreacht is derived from the will of the people, and makes regular reference to this principle in interpreting the constitutional text. Thus, in *Hanafin v Minister of the Environment* Denham J. described the Constitution as «grounded in the will of the people», while in the same case O'Flaherty J. referred to the «sanctity of the role of the people in our constitutional scheme of things»[35]. In this regard, Jacobsohn has commented caustically on the high «decibel level» and «quasi-religious intonation» with which Irish judges have proclaimed «their complete devotion to the demos»[36].

But this veneration of popular sovereignty is not just rhetorical. In interpreting the text of the 1937 Constitution, the Irish courts have concluded that any exercise of public power by the constituted organs of state, not matter how established in constitutional practice, must align with the primacy assigned to popular sovereignty as the foundation stone of the constitutional order. Thus, in *Byrne v Ireland*, the Court concluded that executive powers traditionally derived from the royal prerogative of the British Crown had not been carried over into the post-1937 constitutional dispensation, because the concept of the prerogative – and its royal origins – was deemed to be incompatible with the principle of popular

[34] For an analysis of the concept of the 'constitutional imaginary', see G. TORRES, L. GUINIER, *The Constitutional Imaginary: Just Stories about We the People*', in *Maryland L. Rev.*, vol. 71, n. 4, 2012, pp. 1052-1072.
[35] [1996] 2 I.L.R.M. 61 (June 12, 1996).
[36] G.J. JACOBSOHN, *An Unconstitutional Constitution? A Comparative Perspective*, in *International Journal of Constitutional Law*, vol. 4, n. 3, p. 469.

sovereignty.[37] In *Crotty v An Taoiseach*, the majority of the Court concluded that the executive's power to conduct foreign relations under Article 29(4) of the *Bunreacht* could not be used in a way which resulted in a «diminution of Ireland's sovereignty which is declared in unqualified terms in the Irish Constitution» (Henchy J): such an erosion of state sovereignty was only permissible if explicitly endorsed in a referendum by the Irish people, the ultimate arbiters of the constitutionality of any form of state action[38].

Similarly, in *Costello v Government of Ireland*, as mentioned in the Introduction, the majority of the Supreme Court ruled that the executive could not use its power to ratify the EU-Canada Comprehensive Economic and Trade Agreement (CETA), as the legal mechanism which was proposed to be used to give legal effect to the provisions of CETA within Irish law was not compatible with the overriding status accorded to the constitutional principle of popular sovereignty. More specifically, it would allow an international arbitration tribunal to make binding decisions which would be enforceable in Irish law, but not be subject to supervisory review by the organ of the state charged with ensuring that all Irish law conformed with constitutional requirements, i.e. the Irish courts themselves[39]. Such a state of affairs was deemed to be incompatible with Ireland's embedded constitutional commitment to popular sovereignty: unlike EU membership and the supremacy accorded to judgments of the Court of Justice of the EU (CJEU), it could not be read as authorised by any existing constitutional part of the constitutional text, as approved by the people. The majority thus ruled that Ireland could only ratify CETA if the implementing legislation made provision for the possibility of Irish courts exercising a form of residual judicial scrutiny over arbitration awards.

The Irish courts thus treat popular sovereignty as the central structuring principle of the constitutional order. The powers of all constituted organs of the state must were exercised in ways that respect the primacy of the popular will. Even historically well-established aspects of separation of powers must yield to the primacy of popular sovereignty. More generally, so too must the functioning of the elected branches of the state. The Oireachtas and (less directly) the executive may indirectly represent the people: however, their authority is subordinate to the popular will, as directly expressed through the original and amended constitutional text.

In other words, the primacy of popular sovereignty establishes what Greene has described as the «weaker legitimacy» of the constituted organs of the state «vis-à-vis the People»[40]. This weaker legitimacy has regularly been cited to justify the extensive judicial review powers of the Irish courts. More generally, it forms the basis for a wider concept of the constitutional order, which sees the functioning of the constituted organs of state as only forming part of a wider structure of democratic self-governance.

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[37] [1972] I.R. 241.

[38] *Crotty v An Taoiseach* [1987] IR 713, now best read together with *Pringle v Government of Ireland* [2012] IESC 47.

[39] [2022] IESC 44.

[40] A. Greene, *Parliamentary Sovereignty and the Locus of Constituent Power in the United Kingdom*, in *International Journal of Constitutional Law*, vol. 18, n. 4, 2020, pp. 1166-1200.

One particular judicial opinion is especially worthy of note in this regard. In *Doherty v Referendum Commission*, Mr. Justice Hogan – the *primus inter pares* commentator on Irish constitutional law, in both his academic and judicial capacities – waxed lyrical about the overriding importance of popular sovereignty to the Irish constitutional order: «The Constitution envisaged a plebiscitary as well as a parliamentary democracy and, in doing so, it has created a State which can demonstrate – in both word and deed – that it is a true democracy worthy of the name. By providing in Article 6(1) for popular sovereignty in which the People would "in final appeal...decide all questions of national policy", it envisaged a society in which all citizens would be called upon from time to time to make critical decisions regarding their future, the future of their neighbourhood and, ultimately, the future of their country»[41]. «Hogan J. went on to emphasise that the concept of popular sovereignty…which is reflected in Article 5, Article 6, Article 46 and Article 47 of the Constitution…has become our own constitutional cornerstone. It is that very cornerstone on which the entire referendum edifice is constructed»[42].

Within these few short paragraphs, Hogan J. articulates an entire constitutional philosophy. Popular sovereignty is conceptualised as not just the originating source of constitutional authority but also as a continuing constitutive force, with citizens periodically called upon via the referendum process to participate collectively in the shaping of the fundamental norms of their shared society. This 'plebiscitary' form of democracy – a concept which, as discussed below, is viewed as something of a contradiction in terms by certain influential strands of liberal constitutional thought – is described as co-existing with 'parliamentary democracy' within the framework of the Irish constitutional order. Most remarkably, to cap off his analysis, Hogan J. suggests this 'plebiscitary' dimension is an integral part of Ireland's claim to be a «true democracy worthy of the name».

What is particularly significant about Hogan J's analysis is how popular sovereignty is conceptualised as giving Irish constitutional democracy an extra dimension, which the functioning of the institutions of 'parliamentary democracy' – i.e. the constituted organs of the state – cannot replicate by themselves. As the rest of the judgment makes clear, this extra dimension must be respected by the various organs of the state in exercising their constitutionally derived powers and functions – and defended and vindicated, if necessary, by the courts in their capacity as constitutional guardians. However, it also suggests that the institutional mechanisms of Irish parliamentary democracy have certain inherent limits, i.e. that their representative capacity is insufficient or unsuitable to serve as a perfect mirror for the popular will. Hence Hogan J's emphasis on the referendum mechanism supplementing parliamentary democracy in order to achieve 'true democracy': the people are conceptualised as capable of engaging in an authentic, collective, participative process of

[41] *Doherty v. Referendum Commission* [2012] IEHC 211, at para 21.
[42] *Ibid.*, at para 23. Hogan J. invoked a remarkable roll-call of the shapers of the Irish constitutional order in support of this analysis, describing it as the «theory of popular sovereignty for which Griffith argued and Pearse fought and Collins died and de Valera spoke and Hearne drafted and Henchy wrote and Walsh decided».

democratic will-formation through the referendum process, which cannot be fully duplicated through the workings of the established institutional organs of the state.

Significantly, the Irish courts have also extended this logic to themselves: even the exercise of constitutional review powers by the judiciary must respect the overriding primacy of the principle of popular sovereignty. Thus, in the *Regulation of Information Bill* case, the Supreme Court rejected the argument that the power of the people to amend the Constitution was limited by the requirements of natural law[43]. In this case, a proposed constitutional amendment designed to guarantee the right to access information about how to obtain an abortion was approved in a popular referendum, despite an earlier vote in 1983 to insert a clause into the 1937 Constitution obliging the State to vindicate the right to life of the unborn child[44]. The Bill implementing this vote was challenged, on the basis that it threatened to undermine the constitutionally recognised right to life and human dignity of the foetus in the womb, and thus was contrary to fundamental natural law principles. The Supreme Court decisively rejected this challenge, ruling that there were no limits to the popular amendment power – and thus no inherent limits on popular sovereignty more generally, whether alleged to be derived from the constitutional text itself or by reference to natural law principles[45]. In *Doherty*, the Supreme Court confirmed this analysis – in line with Hogan J's analysis of the 'plebiscitary' character of Irish constitutional democracy.

Thus, within the Irish constitutional imaginary, the will of the people is conceptualised as the supreme good, rather than any specific substantive set of values: in a modification to the classic Ciceroan formula, *vox populi* has displaced *salus populi* as the *suprema lex* of the Irish constitutional order. This has had implications for how the Irish courts have engaged in 'political process' review, to use the phrase associated with the 'democracy reinforcing' role envisaged for national courts by John Hart Ely and others – in ways that deserve careful disentanglement.

4. Political Process Review in Ireland

Respect for popular sovereignty inevitably entails respect for all forms of voting procedure – including the electoral process used to select members of the legislature, and in particular the referendum process which gives the Irish people at large the final say as to how and whether the 1937 Constitution should be amended. The Irish Supreme Court has recognised the particular importance of the judicial protective role in this regard, and has been quick to protect the formal integrity of Irish voting procedures.

Thus, as mentioned in the Introduction, the Court has intervened several times to ensure fair procedure in the functioning of the electoral process, in cases such as *Doherty v Government*

[43] *In re Article 26 and the Regulation of Information (Services outside the State for the Termination of Pregnancies) Bill 1995* [1995] 1 I.R. 1.

[44] See in general F. DE LONDRAS M. ENRIGHT, *Repealing the 8th: Reforming Irish Abortion Law*, Bristol, Bristol University Press, 2018.

[45] See also Barrington J's remarks in *Riordan v An Taoiseach (No 2)* [1999] 4 IR 321, 330, that 'there can be no question of a constitutional amendment properly before the people and approved by them being itself unconstitutional'

of Ireland[46], *King v Minister for the Environment (No 2)*[47], *O'Donovan v Attorney General*[48] and *McMahon v Attorney General*[49]. Similarly, in the string of cases concerning the conduct of constitutional referendums, the Court has concluded that the government is not entitled to spend taxpayer's money on promoting a particular side in a referendum vote[50], and must also ensure that the electorate receive fair and impartial information setting out the pros and cons of every proposed constitutional amendment[51].

However, as Cahill has noted, this case-law also shows a marked preference for maintaining «procedural constitutional integrity» over «substantive constitutional integrity»[52]. The Irish courts have been very reluctant to disturb the functioning of the political process, once it conforms to the formal rules of the established electoral game. Thus, for example, the Supreme Court has made it clear that it will not overturn referendum results even if the campaign featured unlawful government advocacy for one side – unless there is compelling evidence that the outcome of such votes would have been different but for the impugned behaviour (a test which has as yet never been satisfied). Thus, for example, the Supreme Court in *Jordan v Minister for Children and Youth Affairs*[53] rejected an application to annul the results of a 2012 referendum on children's rights, even though the Court had earlier ruled that public funds had unlawfully been spent effectively promoting a particular outcome[54].

As mentioned in the Introduction, the courts have also been reluctant in the past to impose positive obligations on the Oireachtas to facilitate access to voting for the disabled, prisoners and other groups[55]. These specific cases would probably be decided differently today, in particular because of the influence of ECHR law. But they are still worth mentioning as an illustration of how reluctant in general the Irish courts are to interfere in the political process, absent some infraction of the formal rules of the game.

These decisions are also an example of how reluctant the Irish courts are to impose positive obligations on public authorities, unless the text of the Constitution itself provides a clear legal basis for so doing[56]. This reflects a wider reluctance on the part of the Irish courts to

[46] [2010] IEHC 369.
[47] [2007] I IR 296 (SC).
[48] [1961] IR 114.
[49] [1972] IR 69.
[50] *McKenna v An Taoiseach (No 2)* [1995] 2 IR 10 (SC).
[51] *McCrystal v Minister for Children and Youth Affairs* [2012] IESC 53. This case-law has the effect of creating a somewhat odd legal situation, whereby a government that has piloted legislation proposing that a particular constitutional amendment be put to the people then has to adopt an institutional position of neutrality in respect of that proposal during the referendum campaign itself. (Government ministers can campaign for a particular side in their capacity as individuals: see *Jordan v Ireland* [2018] IEHC 438.) The rationale for this position is that the sovereign people should be empowered to decide for themselves how to vote on a particular amendment proposal, without being unduly influenced by the government of the day. Views differ as to how convincing this rationale is. But it does graphically illustrate the semi-sacred status accorded to popular sovereignty in the Irish constitutional imaginary.
[52] M. Cahill. *Introduction*, n. 18 above.
[53] [2015] IESC 33.
[54] *McCrystal* [2012] IESC 53, referred to at n. 51 above.
[55] *Draper v Attorney General* ([1984] *IR* 277 (SC); *Breathnach v Ireland* [2001] 3 *IR* 230 (SC).
[56] L. Cahillane, *The TD Case and Approaches to the Separation of Powers in Ireland*, in *Irish Judicial Studies Journal*, n. 3, 2022, pp. 10-19.

interfere with political decision-making, absent clear constitutional authorisation to do so. This should not be confused with a general, across-the-board, straightforwardly deferential stance. The Irish courts can be highly protective of rights, and quite interventionist in enforcing compliance with the constitutional scheme of separation of powers – but in so doing are careful to refer back to the specifics of the constitutional text, as amended over time via the referendum process.

Once again, this reflects the centrality of popular sovereignty to the Irish constitutional imaginary. The courts view their constitutional role as facilitating the democratic process and giving effect to the popular will as manifested though the text of the Constitution – rather than securing respect for an amorphous set of underlying fundamental values. This general description is backed up by a survey of recent Supreme Court jurisprudence by Casey and Doyle – who (as cited in the Introduction to this paper) note the Court's repeated emphasis on the importance of ascertaining the expressed will of the Irish people as articulated via the constitutional text, and their contrasting reluctance to invoke general moral precepts as a basis for their reasoning[57].

This stance explains certain notables features of Irish constitutional jurisprudence, which contrast in interesting ways with approaches adopted in many other democratic states. To start with, the Irish courts have also not developed much in the way of a substantive political process jurisprudence, concerned with protecting minority rights, clearing blockages in the political system and the like. They also tend to tread warily in giving effect to unenumerated constitutional rights, Dworkinian-style inherent legal principles or other unwritten values and norms which lack an explicit basis in the written text – although their position in this regard has fluctuated to some extent over time. Nor have they actively leaned into a 'transformative' constitutional agenda, in contrast to some national judiciaries – except insofar as adjusting colonial law from the era of British rule is deemed to require adjustment to reflect the new centrality of Irish popular sovereignty within the constitutional order, as was the case in *Byrne v Ireland* discussed above. In general, in the absence of an explicit constitutional mandate to embark on such alternative interpretative trajectories, the Irish courts focus instead on enforcing compliance with the framework of norms set out in the existing text of the 1937 Constitution – and see their constitutional role as bounded in those terms[58].

As a consequence, Irish constitutional rights jurisprudence tends to be extensive and detailed where the text provides a clear basis for normative development, but thin and lacking in development and structure when it does not. Thus, for example, the case-law on personal liberty rights and associated restraints on police search and seizure and the like is

[57] C. CASEY, O. DOYLE, *Charter or Higher Law?*, n. 14 above.
[58] See in general D. PRENDERGAST, *Article 16 of the Irish Constitution and Judicial Review of Electoral Processes*, in L. CAHILLANE, J. GALLEN, T. HICKEY (eds), *Judges, Politics and the Irish Constitution*, Manchester, Manchester University Press, 2017, pp. 252-268.

robust. However, the same could not generally be said for equality and non-discrimination protection – even though recent judgments have broken new ground in this respect[59].
Similarly, Irish separation of powers jurisprudence is often rigorous, but tends to be more detailed and precise in areas where the constitutional text indicates clear distinctions need to be made competencies of different branches of the state. It also can be at times quite formalistic in character, often taking its cue from the specific turns of phrase in the wording of constitutional provisions rather than from a more general conceptual vision of how the various elements of the constitutional framework should be read together as a unified whole. Again, however, changes are happening in this respect, with judges like the already mentioned Hogan J. seeking to set Irish constitutional jurisprudence on more normatively coherent foundations.
The form which Irish political process jurisprudence takes, and case-law related to fundamental rights/separation of powers doctrine more generally, has thus been heavily influenced by the centrality of popular sovereignty to the national constitutional imaginary. Far from being a residual or even a suspect concept, as it has become in many European states since 1945, the concept of the popular will continues to play a key structuring role within the ongoing evolution of Irish constitutional law.

6. Conclusion

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Thus, as discussed, the primacy of the popular will, as expressed through constitutional text, remains the ultimate reference point of the Irish constitutional order. Popular sovereignty is not just viewed as the originating source of the legitimacy of the Irish constitutional order, but rather plays a continuing direct role in constitutional governance via the referendum mechanism and its status as the controlling value of constitutional interpretation. This reflects the historical legacy of Ireland's subjugation as a colonised territory, and the desire to shake off foreign rule and to affirm democratic self-determination[60]. It also reflects a certain reluctance to equate the legislative will with the popular will more generally, and an underlying strong commitment to the idea of a 'plebiscitary democracy'.
Few if any voices challenge the primacy accorded to popular sovereignty in the Irish constitutional imaginary. Eoin Daly and Tom Hickey have mapped out an alternative understanding of how the principle of popular self-government could be conceptualised within the Irish constitutional order, drawing upon neo-republican and political constitutionalist theory[61]. In particular, Tom Hickey has criticised how this orthodoxy is built around the dubious notion that the Irish people are a «single agent, with a collective

[59] C. O'Cinneide, *Equality Authority v Portmarnock Golf Club*, in *Dublin University Law Journal*, vol. 43, n. 2, 2022-3, pp. xx-yy.
[60] Ireland could be viewed as an early adopter of what Richard Albert has described as «decolonial constitutionalism» see R. Albert, *Decolonial Constitutionalism*, in *U of Texas Law, Legal Studies Research Paper No. 8/20/2024-RDA*, available at SSRN.
[61] E. Daly, T. Hickey, *The Political Theory of the Irish Constitution: Republicanism and the Basic Law*, Manchester, Manchester University Press, 2015.

will»[62]. In his view, this assumes that the people share a «thick, value-laden identity that renders [them] antecedent and superior to the Constitution», which disregards the reality that «the people are too vast to ever come together as one in any concrete sense». In contrast, Hickey argues that the constitutional text and existing case-law can be re-interpreted as supporting a different understanding of the ideal of popular sovereignty, one which views the people as «immanent within, rather than as antecedent to, the democratic constitutional system»[63]. But such views remain a minority perspective. Hogan J's views in *Doherty* encapsulate constitutional orthodoxy.

Indeed, if anything, this orthodoxy has strengthened in recent years. In particular, the functioning of the referendum mechanism has been credited with reinforcing a popular sense of participation in, and ownership of, the democratic process. Furthermore, numerous commentators have attributed what they see as Ireland's relative immunity from divisive 'populist' politics to these persisting traces of popular sovereignty in its constitutional governance structure[64]. In other words, the elements of popular sovereignty that remain active within the Irish constitutional order are widely regarded as deepening Irish democratic life. By supplementing the functioning of parliamentary democracy, they are credited with reducing the type of voter disconnection from the levers of power that has fuelled the growth of populism elsewhere.

However, some qualifications need to be entered here, as mentioned in the Introduction to this paper. To start with, voter discontent is not unknown in Ireland. Indeed, anti-establishment parties – specifically Sinn Féin – have grown considerably in strength over the last half decade or so. So copious constitutional affirmations of popular sovereignty and frequent recourse to the referendum mechanisms should not be taken as confirmation that Irish democracy is in perfect health. Such political dissatisfaction as exists is generally not targeted at the constitutional order as such. But it should be read as counselling against excessive complacency about democratic bona fides of Ireland's 'plebiscitary democracy'.

Furthermore, the recent failed attempt to amend the provisions of Article 41 of the Constitution which relate to care in the home showed how difficult it can be to generate broad popular support for specific reform proposals – especially, as happened in this case, when they are seen to be lacking in substance. This failed referendum also illustrated how government control over which amendment proposals are put to the public can be limiting. More ambitious reform proposals, supported by elements of civil society, were not put to the public – and this was widely seen as having restricted the referendum debate in an unsatisfactory way. In general, this debate highlighted the limitations of the referendum

[62] T. Hickey, *Popular Sovereignty in Irish Constitutional Law*, in *Dublin University Law Journal*, vol. 4, n. 2, 2018, pp. 147-170.

[63] Hickey cites Lars Vinx to the effect that «there can be no people prior to or apart from constitutional law, and all talk of the people as the historical author of the constitution is taken to be a fiction without normative relevance»: L. Vinx, *The Incoherence of Strong Popular Sovereignty*, in *International Journal of Constitutional Law*, vol. 11, n. 1, 2013, pp. 102.

[64] S. Hix, *Remaking Democracy: Ireland as a Role-Model*, in *Irish Political Studies*, vol. 35, n. 4, 2020, pp. 585-601.

process as a tool for engaging with complex social issues. Appeals to the popular will may not always be a workable substitute for ordinary political process.

The centring of popular sovereignty within the Irish constitutional order also potentially raises issues in respect of Ireland's place within wider structures of European governance, such as the EU and ECHR – which obviously entail a degree of *shared* sovereignty, in practice if not necessarily in theory. In one way, as discussed in Paragraph 3 and the Introduction, the continuing role played by the people as a collective entity has smoothed the way for Ireland's participation in EU integration in particular, with the referendum process being used to get public endorsement for treaty revisions resulting in enlarged EU competency. Also, Irish public opinion tends to be supportive of both the EU and ECHR as political projects, reflecting a wider sense that the national sovereignty of a small state like Ireland is best achieved via participation in larger governance structures[65]. Thus, when the legal ramifications of the above mentioned 'pro-life' 8th Amendment, approved by a referendum vote in 1983, started to clash with the requirements of EU and ECHR law, this conflict was headed off by subsequent referendums – passed in haste, with the explicit intention of bringing Irish constitutional law into line with European law. However, it is not impossible to envisage a future hypothetical scenario where a potential conflict between European legal norms and the claims of popular sovereignty might be less easy to resolve[66].

Finally, it is worth noting that the post-1937 Irish constitutional system has never faced a situation where it had to deal with a constitutional amendment that was widely perceived to threaten its 'basic structure' of democratic values, or which ran clearly counter to established international human rights norms. As a consequence, Irish fidelity to popular sovereignty as the supreme constitutional value has never come under any sustained normative pressure.

It remains to be seen whether and how this may change in the future. It may be the case that e.g. a deepening relationship with Northern Ireland, perhaps as art of a move towards unification, may provoke new thinking about popular sovereignty – not so much about the principle of popular self-government as such, but instead about the assumed unitary status of the Irish people. In this respect, Arato's concept of 'post-sovereignty' might come in play, i.e., the idea that the normative limits of 'sovereignty' as a democratic principle should be acknowledged and 'thematised' in the formulation of new constitutional norms[67]. But only time will tell. What is clear for now is that the centrality of popular sovereignty to the Irish constitutional order is deeply rooted. It remains integral to both popular and elite understanding of what respect for 'true democracy' entails, and continues to shape the

[65] C. O'Cinneide, *Democracy, Sovereignty and Europe: The Contrasting European Trajectories of Ireland and the UK*, in *VerfBlog*, 2023/4/12.

[66] In his judgment in *Costello v Government of Ireland* [2022] IESC 44, [179], Hogan J. indicated that ECHR membership – which has not been endorsed by a referendum – might be viewed as handing over excessive authority to a supranational court, if it was not for the ECHR's unique status as a rights protective instrument which «has long been a favourite of the law and our constitutional order».

[67] A. Arato, *Post Sovereign Constitution Making: Learning and Legitimacy*, Oxford, Oxford University Press, 2016.

substance of political process review in Ireland and constitutional jurisprudence more generally.

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