Penn State International Law Review

Volume 14
Number 3 *Dickinson Journal of International Law*

Article 14

5-1-1996

When Irish Eyes Aren't Smiling-Legalizing Divorce in Ireland

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I. Introduction

IN THE NAME OF THE FATHER . . . Ireland, to many the epitome of a Catholic Nation . . . AND OF THE SON . . . a nation whose Constitution strictly forbade legislating for divorce . . . AND OF THE HOLY GHOST. . . has, by the slightest majority, switched gears. The most Catholic nation, outside of the Vatican, may be turning away from the Church and heading down the road of modern individualism.

On November 24, 1995, 1.6 million Irish citizens voted on a Referendum which would remove the constitutional ban on divorce.[1] After what one observer labeled the "bitterest, meanest most emotional national debate in modern Ireland,"[2] the Referendum passed with a mere .3% majority.[3]

The stakes were high, in a debate which pitted Catholic heavyweights such as Pope John Paul II and Mother Teresa against nearly the entire Irish Government. While divorce supporters claimed the sole issue of the Referendum was the right to remarry,[4] much more was ultimately at stake. The combatants waged a battle for the soul of Ireland, and the Catholic Church, so prominent in the formation of the Emerald nation, lost — ever so slightly — but lost all the same.

Ireland is the last European nation to legalize divorce.[5] Some view the results of the Referendum as Ireland's wake-up call to join the rest of the modern world. But for others, joining the modern world means sharing in its misfortunes. To traditionalists, becom-

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1. Fred Barbash, *Irish Vote to Lift Ban on Divorce*, WASH. POST, Nov. 25, 1995, at A1.

2. James F. Clarity, *Irish Voting in Close Race on Divorce*, N.Y. TIMES, Nov. 25, 1995, at A5.

3. Barbash, *supra* note 1.

4. Carol Coulter, *How Divorce Irish Style Works Today*, IR. TIMES, Oct. 14, 1995, at 6. *See also* Denis Coghlan, *Super Cautious Line To Be Keynote for Divorce Referendum*, IR. TIMES, Sept. 14, 1995, at 14.

5. James F. Clarity, *Church and State Face Off in Referendum on Divorce in Ireland*, N.Y. TIMES, Oct. 29, 1995, at 19.

ing a modern nation costs far more than they believe Irish society ought to pay. The Referendum's victory was not a booming wake-up call. The narrow results indicate that legalizing divorce does not symbolize a total death of the Catholic Church in Ireland. Rather, the sharply divided nation must now prepare itself for serious battles over more contentious issues, such as abortion.

This Comment considers the recently passed Referendum to legalize divorce in Ireland. Part II examines the history of divorce leading up to the Referendum; from its Catholic origins, to a previous failed attempt to legalize divorce, through two pieces of legislation which paved the way for the successful Referendum. Part III analyzes the amendment from its initiation through political debates over the amendment's wording. This Part also examines the arguments made for and against divorce. Next Part III focuses on the role of the Irish Government and the Roman Catholic Church. Part III concludes with an analysis of the close results of the Referendum and explores two lawsuits which challenged spending by the Irish Government in support of a Yes vote and the legality of the Referendum's results. Finally, Part IV concludes with some concerns and possible ramifications of legalized divorce in Ireland and the social schism which the Referendum's result exemplifies.

II. History of Divorce in Ireland

By accepting the Referendum, Irish citizens removed a ban on divorce from the constitution. Prior to the Referendum, Ireland's constitutional ban made it the only country in Europe to outlaw divorce. The Irish Constitution stated: No law shall be enacted providing for the grant of a dissolution of marriage.[6]

A. Bunreacht na hEireann (The Constitution of Ireland)

In 1937, Bunreacht na hEireann replaced the Irish Free State Constitution of 1922 as the law of the southern Isle.[7] The Bunreacht na hEireann differed from the 1922 constitution in many respects, including the addition of article 41 entitled "The Family."[8] Recognizing the importance of the Irish family, the framers

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6. IR. CONST. art. 41, § 3.2.

7. DAVID GWYNN MORGAN, CONSTITUTIONAL LAW OF IRELAND 9 (1990). This book is the first to present an indepth analysis of the 1937 Constitution.

8. ALAN JOSEPH SHATTER, FAMILY LAW IN THE REPUBLIC OF IRELAND 1 (1977) [hereinafter SHATTER].

of the Bureacht na hEireann hoped to preserve the family by including in the constitution a prohibition against the legislation of divorce and limiting Irish recognition of foreign divorces. Scholars claim parts of the constitution, including article 41, to be wholly inspired or dictated by Roman Catholic moral and social teaching.[9] The heavy Catholic influence stems from Ireland's attempt to disassociate itself from its previous Anglican oppressor.[10] Whatever the inspiration, it is clear that the framers of the 1937 constitution opposed any state action promoting divorce.[11]

Although the constitution precluded granting a divorce, the high court could issue a decree of a divorce *a mensa et thoro*.[12] Only three occurrences could provide bases for such a decree: cruelty, adultery, or unnatural practices.[13] If any of these bases was found, the court could then determine whether a husband should pay alimony.[14] Further, the court could declare, if necessary, a spouse unfit to have custody of the children of the marriage.[15] Judicial separation has since been expanded through legislation that will be discussed in Part E.

Article 41, section 3.3 of the Bunreacht na hEireann addresses Irish recognition of foreign divorces.[16] Prior to 1986, a foreign divorce was recognized in Ireland only if both parties were

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9. *Id.* at 28. (Citing encyclicals of Pope Pius XI: *Divini Illius Magistri and Casti Cunnubi*).

10. "The inspiration behind the establishment of Bunreacht na hEireann in 1937 was the desire to have a constitution which was free from marks (however symbolic or trivial) of subservience to the former colonial power." MORGAN, *supra* note 7, at 12.

11. "We pledge the State to protect the family and its constitution and its rights generally. This is not a mere question of religious teaching even from the purely social side, apart all together from that, we would propose here that we should not sanction divorce." (quoting Mr. deVelera in his introductory speech on the second stage of the Draft Constitution) SHATTER, *supra* note 8, at 130.

12. *A mensa et thoro* — Latin for "from bed to board" as cited in SHATTER, *supra* note 8, at 115.

13. The Matrimonial Causes Act of 1870; *Id.* at 115.

14. *Id.* at 127.

15. *Id.*

16. No person whose marriage has been dissolved under the civil law of any other state but is a subsisting valid marriage under the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that Jurisdiction during the lifetime of the other party to the marriage so dissolved.

IR. CONST. art. 41 § 3.3.

domiciled in the jurisdiction which granted the divorce.[17] Under the common law rule a wife's domicile was dependent upon that of her husband's,[18] thus a husband could leave his wife in Ireland, move to England, and obtain a divorce which would be recognized as valid in Ireland. The husband would then be free to marry again. This would not be true if the wife moved to England, for her domicile remained that of her husband's.[19] Such sexist results were eliminated in 1986 by legislation to be further discussed in Part D of this Comment.

B. Roman Catholic Influence

Critics of the Bunreacht na hEireann criticize the constitution as being too heavily influenced by the Catholic Church.[20] Undoubtedly the Church played a major role in influencing Irish society and politics in 1937, as evidenced by the special position granted the Church by the Bunreacht na hEireann, under article 44.[21] However, as Ireland changed, the relationship between the State and the Church weakened and article 44 was revoked.[22]

Although the role of the Church in Irish society may be changing, the Church holds steadfast to its position on marriage and divorce. The Catholic Church teaches that marriage is

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17. *See* SHATTER, supra note 8, at 140-41, discussing the following cases: Gaffney v. Gaffney 1975 I.R. 133 (Ir. H. Ct. 1975) (Ir.), a decision which reiterated the principle that a foreign divorce, if granted by a court of the parties common domicil, is recognized as valid in Ireland. This decision followed an earlier decision, Bank of Ir. v. Caffin (1971) I.R. 123 (Ir. H. Ct. 1971) (Ir.), which rejected the claim that the Government violates the ban on divorce by recognizing foreign divorces.

18. SHATTER, *supra* note 8, at 141 (quoting Counihan v. Counihan 1973 (Unreported) (Ir. H. Ct. 1973) (Ir.).

19. *Id.* at 143.

20. Gerard Hogan, *A Stunning Achievement, Now in Need of Updating*, IR. TIMES, Apr. 19, 1995, at 12. Hogan wrote a series of three essays published in the Irish Times, "Reviewing the Constitution." This first essay examines the document's position in Irish Society.

21. Article 44 provides: The State acknowledges that the homage of the public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion. IR. CONST. art. 44, § 1.1. Additionally, the State recognizes the social position of the Holy Catholic Apostolic and Roman Catholic Church as the Guardian of Faith professed by the great majority of citizens. *Id.* § 1.2.

22. In 1972, following a Referendum, the Fifth Amendment of the Constitution Act deleted article 44, §§ 1.1, 1.2, regarding Church in society. *See* SHATTER, *supra* note 8, at 38 n. 10.

permanent and indissoluble.[23] However, the Church may find that a marriage lacked proper consent, and therefore was never a valid marriage.[24] Additionally, the Church may grant an annulment, which is not based upon improper consent but upon a religious change in one of the parties.[25]

It is now possible to receive a dissolution of marriage from the Church, whereas prior to the Referendum, the Bunreacht na hEireann strictly forbade dissolution. So the Bunreacht na hEireann, while obviously influenced by the Church's ideal that marriage is forever, took an even stronger stance than the Catholic Church.

C. The 1986 Referendum

Forty-nine years after the constitution was implemented, the Catholic Church did not influence Irish society and politics as it once did. This is evidenced by the fact that many believed that the ban on divorce was too "Catholic" for a modern, secular Irish society.[26] Consequently, in 1986, the government initiated a Referendum to remove the ban on divorce. Just two months before the vote, 57% polled claimed they favored lifting the ban.[27] However, voters rejected the Referendum nearly two to one.[28] Supporters of the Referendum blamed this reversal of public

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23. From a valid marriage there arises between the spouses a bond which of its own nature is permanent and exclusive. 1983 CODE c.1134. Therefore, a marriage which is ratified and consummated cannot be dissolved by any human power or by any cause other than death. 1983 CODE c.1141.

24. 1917 CODE c.1081 addresses defective consent. Factors which render consent defective and consequently result in the marriage being declared null include: (1) insanity, or ignorance 1917 CODE c. 1082; (2) error of fact or fraud 1917 CODE c.1803; and (3) error of law, 1917 CODE see, BERNARD A. SIEGLE, MARRIAGE TODAY (1979).

25. 1983 CODE c.1143. This is known as the Pauline Privilege. A marriage entered into by two unbaptized persons will be dissolved in favor of the faith of the party who received baptism, if the unbaptized party is unwilling to live with the baptized party, or unwilling to live without offending the creator, unless the baptized party has given the other just cause to depart. If the baptized person wishes to remarry, then a priest must first ask the unbaptized party whether he or she wishes to be baptized, 1983 CODE c.1144 § 1, or whether he or she will live peacefully with the baptized party, without offense to the creator. 1983 CODE c.1144 § 2.

26. Carol Coulter, *Divorce Referendum is Another Milestone to Secular State*, IR. TIMES, Sept. 25, 1995, at 4.

27. Jack Jones, *Lesson of 1986 Divorce Referendum Must be Recalled Before Predicting 1995 Outcome*, IR. TIMES, Oct. 5, 1995, at 7.

28. James F. Clarity, *Ir. Cabinet Backs Lifting Divorce Ban*, N.Y. TIMES, Sept. 17, 1995, at 9.

opinion on the Catholic hierarchy which not only avoided discussion of the issue, but also used scare tactics to pressure many to vote against the Referendum.[29] Yet others criticized the Referendum's failure to address property distribution for causing many to vote against the Referendum.[30]

Since 1986, the parliament has passed key legislation addressing both property distribution and foreign divorce recognition.[31] Supporters of the 1995 Referendum hoped this legislation would persuade voters to abolish the ban.

D. Domicile and Recognition of Foreign Divorces Act of 1986

In response to the defeat of the 1986 Referendum, the Oireachtas[32] sought to broaden divorce in Ireland. Realizing that they only had power to address foreign divorces,[33] they passed the Domicile and Recognition of Foreign Divorces Act. The principal change under the Act was that the requirement of common domicile was replaced with a rule that a foreign divorce would be recognized if either spouse was domiciled in the foreign jurisdiction.[34] However, the Act limits the jurisdictions from which it will recognize divorces.[35] Further, the Act abolished the common law rule which stated that upon marriage a woman acquires the domicile of her husband and is incapable of having another domicile during the marriage.[36] The law also established that domicile is determined at the time the divorce proceedings are initiated.[37]

Although the Act appears to broaden divorce recognition in Ireland, the judicial implementation of the Act has not made

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29. Garret Fitzgerald, *Divorce Debate Comes at Critical Time for Church*, IR. TIMES, Sept. 16, 1995, at 12.

30. Carol Coulter, *Much Has Changed Since 1986 Campaign*, IR. TIMES, Sept. 2, 1995, at 6.

31. *Id.*

32. The Oireachtas is the Irish parliament, which consists of two houses, the upper house, and the lower house. MORGAN, *supra* note 7, at 11.

33. SHATTER, *supra* note 8, at 139.

34. For the rule of law that a divorce is recognized if granted in a country where both spouses are domiciled, there is hereby substituted a rule that a divorce shall be recognized if granted in the country where either spouse is domiciled. Domicile and Recognition of Foreign Divorces Act, 1986; § 5(1) (Ir.).

35. The recognized jurisdictions include England and Whales, Northern Ireland, the Isle of Man, and the Channel Islands. *Id.* § 5(3).

36. A wife shall be regarded as having an independent domicile. *Id.* § 1.

37. Domicile means domicile at the date of the institution of the proceedings for divorce. *Id.* § 7.

recognition more prevalent. The courts place a heavy burden on one seeking foreign divorce recognition.[38] Establishing new domicile requires an intention to abandon previous domicile, coupled with an intent to reside indefinetly in the domicile of choice or the foreign state.[39] In determining intent, courts must consider the conduct of the party seeking to establish a new domicile viewed against the surrounding circumstances.[40] Many who rely upon foreign divorces and subsequently remarry have had their second marriages declared invalid.[41] Irish courts will not recognize their foreign divorce due to a failure to meet the domicile requirement.[42] Although the Act was intended to broaden Irish recognition of foreign divorces because of the court's narrow interpretation of domicile, the Act failed to broaden recognition to a great extent.

E. Judicial Separation and Family Law Reform Act of 1989

In 1989, the Oireachtas sought to reform the Matrimonial Causes and Marriage Law of 1870.[43] The essence of the reform was to consider the constitutional, social, and economic changes of the previous 129 years. The result of the reform was the Judicial Separation and Family Reform Act of 1989. This Act deals with obtaining a decree of separation and sets forth six grounds upon which an application may be made.[44] Even if a decree is granted,

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38. Coulter, *supra* note 4.

39. "I do not find the requisite intention, definite intention to reside indefinitely in England that would be sufficient to warrant a finding of change of domicile." V McC v. J McC 1994 No. 62, (Transcript) (Irs. S.C. 1995) (Ir.).

40. PL v. An Tard Chlaratheoir 1995 2 ILRM 241 (Ir. H. Ct. 1995) (Ir.). In this case the purchase of a home in England did not suffice to establish domicile in England.

41. V McC v. J McC (1994) No. 62, (Transcript) (Ir. S.C. 1995) (Ir.).

42. *Id.*

43. *See* SHATTER, *supra* note 8, at 115.

44. An application for a decree of separation may be made if:
1) the Respondent has committed adultery
2) the Respondent has behaved in such a way that the Applicant cannot reasonably be expected to live with Respondent;
3) there has been desertion by the Respondent of the Applicant for a continuous period of at least one year immediately preceding the date of application;
4) the spouses have lived apart for a continuous period of at least one year immediately preceding the date of application and that the Respondent consents to a decree being granted;
5) the spouses have lived apart for a continuous period of at least three years preceding the date of application; or

the marriage is not dissolved, which prohibits the parties from remarrying.[45]

Although the Act provided numerous grounds for separation, grant of a decree was not guaranteed upon application.[46] For example, in 1992, 2718 petitions were filed and only 1015 were granted.[47] While the Act did drastically increase the number of applications, it did not substantially affect the acceptance rate.[48]

The most dramatic portion of the Act allows the courts to grant a decree of separation upon a finding that a normal marriage relationship has not existed for at least a one year period preceding the application.[49] One husband challenged the constitutionality of this section, claiming that it is inconsistent with the protection afforded the family by article 41.[50] The court recognized the right to marry[51] as an unenumerated right protected by the constitution. However, the court noted that, "none of the personal rights of the citizens are unlimited; their exercise may be regulated by the Oireachtas when the common good requires this."[52] The court further stated that: "[i]n interpretation and application of the constitution, regard must be had to the extent to which ideas and values prevailing at one period have been conditioned by the passage of time."[53] The court concluded that the Oireachtas may provide for separation in marriages which have deteriorated to such an abysmal state that the common good calls for separation.[54]

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6) the marriage has broken down to the extent that the Court is satisfied in all circumstances that a normal marital relationship has not existed between the spouses for a period of at least one year immediately preceding the date of the application. Judicial Separation and Family Law Reform Act § 2(1) (1989).

45. Judicial Separation and Family Law Reform Act (1989).

46. Coulter, *supra* note 4.

47. *Id.*

48. In 1988, 217 applications were filed and 92 decrees of Judicial Separation were granted. *Id.* These statistics may not accurately reflect the number of separations because court overcrowding has caused many to negotiate settlements outside of court regarding support, property distribution, and custody. *Id.* Not much is known about a majority of the cases because family law cases are heard *in-camera* and written judgements are provided from the High Court which do not identify the litigants. *Id.*

49. Judicial Separation and Family Law Reform Act § 2(1)f (1989).

50. F v. F, 1991 (transcript) No. 13402p (Ir. H. Ct. 1991) (Ir.). The husband in this case argued that Article Separation and Family Law Reform Act of 1989 interfered with that protection. *Id.*

51. *Id.* (citing Ryan (1965) IR 294 (Ir.)).

52. *Id.*

53. *Id.*

54. *Id.*

This holding seems to suggest that the preservation of marriage, an essential element in 1937 Ireland, is a value which has changed over time and no longer prevails in Irish society.

The discretion granted the judiciary is disturbing, especially in light of the ambiguous nature of the grounds upon which separation may be granted. No clear standards exist for determining whether an applicant meets one of the six grounds of the Act. It is not enough for one spouse simply to state that the other committed an offense. For example, if an applicant seeks a separation on the grounds that the other spouse has committed adultery, the applicant must present evidence of such an offense. The spouse may then present evidence rebutting the claim.[55]

A case in point is *VS v. RS*.[56] In this case the court addressed what constitutes behavior which one cannot reasonably be expected to live. The judge stated,

> I am satisfied on the probabilities that there were rows from time to time down through the history of the marriage and that the Defendant (husband) physically abused the Plaintiff (wife) on a few occasions . . . I am not satisfied that the Plaintiff has made out a case that the Defendant has behaved in such a way that she can not reasonably be expected to live with him. Accordingly, the Plaintiff's claim for a judicial separation pursuant to 2(1)(b) fails.[57]

However, the judge in this case did grant a decree of separation, on the grounds that normal marital relations had not existed.[58] The court partially based its decision on the fact that the couple no longer had sexual intercourse.[59] Surprisingly, this fact justified separation, while abuse did not. Such a conclusion seems unjust, if the purpose of the Act is to improve the social good. If physical abuse does not constitute grounds for separation, one must question the benefits of the Act. Because the Act provides vast discretion to the judge deciding the case, the results are inconsistent and at times appear entirely arbitrary.

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55. VS v. RS 1990 48 CA (Transcript) (Ir. H. Ct. 1990) (Ir.). In this case, the husband refuted his wife's claim that he had committed adultery by stating he merely went out for drinks with another woman on a few occasions. The Court rejected the wife's adultery claim.

56. *Id.*

57. *Id.*

58. *Id.*

59. The judge stated: "I am satisfied that from about the beginning of 1988 the relationship between the parties deteriorated significantly. Since that time they have not had any sexual intercourse." *Id.*

III. The Amendment

Although the two acts attempted to broaden divorce in Ireland, they were inadequate. Nonetheless, these acts paved the way for further reform. Therefore, in 1995, a Referendum to remove the constitutional ban on divorce was put before the people.

Upon acceptance, the Referendum would serve as an amendment to the constitution. The amendment on the legalization of divorce proposed to do more than simply remove the constitutional provision against divorce. The amendment wrote the actual ground rules for divorce in Ireland into the constitution. Specifically, the amendment allowed for divorce when the spouses have lived apart for at least four years, and there was no prospect for reconciliation.[60] Upon acceptance of the amendment by a majority of the voters, the government planned to implement a corresponding act which specifically addressed various aspects of divorce in Ireland.[61] The government has postponed implementing the act until a finial decision is reached in the lawsuit discussed in Part F, *infra*.[62]

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60. The Fifteenth Amendment of the Constitution Act, 1995 provides as follows:

> A court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that —
> 1. at the date of the institution of the proceedings, the spouses have lived apart from one another for a period or periods amounting to, at least four years during the previous five
> ii. there is no reasonable prospect of reconciliation between the spouses
> iii. such provisions as the court considers proper having regard to the circumstances exist or will be made for the spouses, and children of both of them and any other person proscribed by law
> iv. any further conditions proscribed by law are complied with.

61. Family Law (Divorce) Bill, 1995, consists of the following parts:

> Part I. Planning and General
> Part II. The Obtaining of a Decree of Divorce
> Part III. Preliminary and Ancillary Orders in or After the Proceedings for a divorce
> Part IV. Income Tax, Capital Acquisition Tax, Capital Gains Tax, Probate Tax, and Stamp Duty

62. The government decided to await a final decision in a pending lawsuit before enacting the Family Law (Divorce) Bill. Denis Coghlan, *Divorce Referendum Day Survey*, IR. TIMES, Jan. 5, 1996, at 2. Also the Supreme Court decided certification of the election results was inappropriate until final decision in the same lawsuit. Christine Newman, *Supreme Court Will Consider Whether Hanafin May Appeal*, IR. TIMES, Feb. 9, 1996, at 4.

A. The Referendum

The government established the Department of Equality and Law Reform to help write and campaign for the amendment.[63] Mervyn Taylor of the Labour Party heads the Department.[64] The Department was responsible for the final wording of the amendment which created a conflict between the political parties. One criticism of the Department and Mr. Taylor is the one-sided approach the government took on the Referendum:[65] legalize divorce, whatever the cost.

The zealous role of the Irish government in initiating and campaigning for the Referendum has been criticized by those opposed to divorce.[66] Opponents claim that ever since the 1986 defeat, pro-divorce members of the Oireachtas have been planning for another referendum to legalize divorce, and 1995 was the year. After debates over the wording took place late in the summer of 1995, the Referendum was published in September 1995.[67]

Mr. Hamilton, of the "No Divorce"[68] campaign, criticizes the current system because it gives the government the prerogative to initiate referenda.[69] Mr. Hamilton believes the Government abuses the referendum tool and attempts to manipulate the public

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63. *See* Denis Coghlan, *Super Cautious Line to be Keynote for Divorce Referendum*, IR. TIMES, Sept. 14, 1995, at 14.

64. Mr. Taylor's future was at stake in the election as well. According to the Irish Times, "Divorce is only one of the issues Mervyn Taylor has had to deal with as part of his portfolio. But it is clear that November 24 will be a make or break day for his political reputation." Deaglan DeBreadun, *Taylor Suns Idea of Victors In Sad Tragic Situations*, IR. TIMES, Sept. 19, 1995, at 3. The referendum no doubt made Mr. Taylor's career as he is now being considered to head a powerful committee on constitutional reform. *See* Deaglan DeBreadun, *Taylor-Made for Constitutional Chair*, IR. TIMES, Jan. 27, 1996, at 12.

65. *See* Geraldine Kennedy, *Both Sides Braced for Bitter Battle on Divorce*, IR. TIMES, Sept. 14, 1995, at 1.

66. *See* James F. Clarity, *Irish Cabinet Backs Lifting Divorce Ban*, N.Y. TIMES, Sept. 17, 1995, at 9.

67. Coghlan, *supra* note 63. For the language of the Referendum, see *supra* note 60.

68. "No divorce" is the official name of one group opposed to divorce. Carol Coulter, *Anti Divorce Groups Adds to Criticism of "Sectarian" Remarks*, IR. TIMES, Oct. 24, 1995, at 3. This article also addresses an interesting debate in which certain anti-divorce campaigners criticized the divorce leaders, including Mr. Taylor. Certain anti-divorce supporters reasoned that because certain divorce supporters were Jewish, they could not understand the needs of the Christian majority. *Id.*

69. Carol Coulter, *Anti Divorce Author Claims Many Are Unsure What Amendments Says*, IR. TIMES, Oct. 25, 1995, at 3.

with confusing referenda.[70] It is unclear whether the wording of the Referendum played a role in the slight victory for the pro-divorce side. However the intense campaigning by the government likely contributed to the victory.[71]

1. The Campaign.— The Irish government took an aggressive approach in support of the amendment and did not apologize for its one-sided appeals in favor of divorce. Though opponents could not fault the government for providing voters with information, critics of the government believe it exceeded the bounds of information and crossed into advocacy.[72] Every household received a copy of the government's booklet articulating both the arguments for and against divorce.[73] These arguments were set forth by senior counsel nominated by the chairman of the bar association.[74]

The cost of printing the information booklets totaled 143,000 pounds, excluding fees for legal counsel.[75] Mr. Taylor justified the increasing expenditures by stating: "Most people would recognize the government has an obligation to provide information for the people before a referendum and to give them the materials they need to cast their vote in an informed way."[76]

Mr. Taylor also addressed the government's information campaign, a program separate from the booklets, which advertised

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70. Mr. Hamilton has stated with regard to the referendums, "First it was the referendum to remove the named religion from the Constitution, then the confusing wording on the abortion referendum, which has led to abortion being legal in Ireland when clearly the majority are opposed to abortion and also the divorce referendum in 1986, which rejected divorce by two to one, and now another divorce referendum too soon after the last one." *Id.*

71. The effect of the government's spending was heavily debated during a lawsuit to overturn the results of the referendum. One expert estimated as many as 3% of the voters were influenced to vote yes by the government's campaign. *See* Christine Newman, *Ad Expert Estimates 3% Yes Vote Boost*, IR. TIMES, Jan. 26, 1996, at 6. *See also* Christine Newman, *Campaign Just One Factor in Yes Vote, Court Told*, IR. TIMES, Jan. 25, 1996, at 5.

72. Patricia McKenna, who supports divorce, challenged the Government's ability to spend taxpayer money on the campaign. Ms. McKenna sought relief through the courts. She asked the court to stop the Government from spending money campaigning for a Yes vote; or in the alternative, to force the Government to fund both sides equally. Christine Newman, *Government Challenged Over Divorce Poll Funding*, IR. TIMES, Oct. 28, 1995, at 4.

73. Alison O'Connor, *Referendum Booklet Rounds Up Submissions For and Against Divorce*, IR. TIMES, Oct. 25, 1995, at 3.

74. *Id.*

75. *Id.*

76. DeBreadun, *supra* note 64.

the Referendum and was handled by the Minister for the Environment, who deals with electoral materials.[77]

Mr. Taylor distinguished informing from advocating. He stated that information includes explaining to the public the present state of family law and the effect that the right to remarry would have on a family's legal situation. In contrast, according to Mr. Taylor, advocacy deals with evaluation of the effects of marital breakdown, its pervasiveness, "and many other matters."[78] When asked if the government's information campaign would amount to canvassing, Mr. Taylor responded that the information campaign would include the government's call for a Yes vote.[79] Mr. Taylor believed people were entitled to know the position of the government.[80] Further, Mr. Taylor added that the government had assessed the needs of the Irish citizens and concluded that divorce must be available for those many who desire to remarry.[81]

By presenting its position as being based on compassion for the suffering spouses of Ireland,[82] the government implied that a vote against the Referendum would mean that citizens did not empathize with their fellow citizens. Thus, the government's campaign seemed to do more than simply inform. The information campaign went as far as manipulating the voters and attempted to dictate how citizens should vote.

2. Government Support.— Although it appeared that the Irish government was in favor of legalizing divorce, the members of the Oireachtas were not unified in their support for the amendment. While a majority of the politicians favored legalizing divorce, or at least holding a referendum on the matter, dissention arose because of the amendment's wording.

In particular, many opposed writing the divorce requirements into the constitution. The Progressive Democrats (PD) sought to

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77. *Id.*
78. *Id.*
79. *Id.*
80. *Taylor Says No Quickie Divorce Being Proposed*, IR. TIMES, Sept. 28, 1995, at 6.
81. DeBreadun, *supra* note 64.
82. During a press conference, Mr. De Rosa, the Minister for Social Welfare, stated that the main issue of the referendum was whether Irish citizens have the capacity to be compassionate to those whose marriage had broken down. Carol Coulter, *Government Parties Show a United Front to Appeal for a Yes Vote*, IR. TIMES, Nov. 16, 1995, at 7.

limit the Referendum to a simple deletion of the ban on divorce.[83] Mary Harney, PD leader, stated that although she favors allowing divorce, she would not keep quiet about a plan which she believed did not sufficiently provide for divorce.[84] Ms. Harney believed the Referendum offered voters a false choice between two wrongs: one, vote against the Referendum and leave the constitutional ban on divorce in tact, or two, vote for the Referendum, and an unfair and inflexible approach to divorce becomes part of the constitution, which can only be changed through another referendum.[85] Although many criticized the proposal for writing the terms of divorce into the constitution, when their attempts to change the Referendum failed, they still chose to support the Referendum.[86] To these people, any form of legal divorce is better than a complete constitutional ban.[87]

The rigid approach of placing the standards for divorce into the constitution, as opposed to simply removing the ban, means Ireland may only change the requirements by yet another referendum. A more flexible approach would be to lift the ban and enumerate the requirements in subsequent legislation. This approach is more consistent with the pro-divorce argument that the constitution should reflect the changing nature of Irish society.[88]

3. The Amendment's Language.— The Amendment has been criticized for its vague and confusing language. The first requirement that the spouses live apart for at least four years[89] has been criticized because it discriminates against those living under the same roof and in conflictual relationships, as well as those who cannot afford to move apart.[90] However, Mr. Taylor stated that the courts could construe "living apart" to include those living

83. Dermot Kelly & Michael O'Reagan, *PD Amendment for Deletion of Divorce Ban Heavily Defeated*, IR. TIMES, Oct. 4, 1995, at 6.
84. *Id.*
85. *Id.*
86. *Id.*
87. Reg Cullen, *Bill Passes All States*, IR. TIMES, Oct. 19, 1995, at 6.
88. Hogan, *supra* note 20.
89. IR. CONST. amend. XV (1995).
90. Carol Coulter, *Fears Voiced Over Words of Divorce Amendment*, IR. TIMES, Sept. 14, 1995, at 6. One lawyer stated that, "[i]t also mitigates against reconciliation. If people live together for 366 days out of five years, and it does not workout, the four years start again." *Id.*

under the same roof.[91] Amendment supporters feel comfortable that the judiciary will make reasonable interpretations.[92]

Reliance should not be placed on judicial interpretation, especially in light of the bizarre and unjust results under the Judicial Separation Act.[93] Often when the judiciary exercises such broad discretion, unpredictable outcomes will result. Therefore, without uniform standards, the four-year requirement will not provide much solace to those in abusive or dangerous relationships. Indeed, the physical or emotional force of some spouses may make living apart impossible for those in such relationships.

The second standard, no reasonable prospect of reconciliation,[94] requires broad judicial discretion as well. No guidelines identify the evidence that will establish that reconciliation is unlikely.[95] This ambiguous standard lends itself to extensive legal battles with inconsistent results dependent upon the subjective opinion of the judiciary.

By writing the terms of divorce directly into the constitution, divorce supporters place themselves in the same position as those they criticize for attempting to stifle Ireland's changing society. Implementation promises to be impractical and time-consuming. By requiring couples to live apart for four years, the amendment discriminates against the poor and those in dangerous relationships, where expediency is necessary. Further, the amendment grants the judiciary too much discretion by using vague terms and concepts. The unjust results under the Judicial Separation Act will no doubt resurface under the divorce proceedings. Whatever one's position on divorce, the amendment itself is inadequate.

B. Divorce Supporters

While debates over the final wording of the amendment created slight dissention among the parties, most members of the government rallied around Mr. Taylor in support of divorce. According to Mr. Taylor, the right to remarry is the sole issue of the Referendum.[96] Supporters of divorce argue that those who

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91. *Id.*
92. Kelly & O'Reagan, *supra* note 83.
93. *See supra* text Part II, E.
94. *See supra* note 60.
95. One anti-divorce campaigner pondered whether, "if one partner says there is a such reasonable prospect is the court" obligated to deny the divorce? Coulter, *supra* note 90.
96. DeBreadun, *supra* note 64.

have suffered through miserable marriages ought to be given a second chance.[97] Yet those challenging the Referendum focus on the negative societal effects of divorce. The two positions represent an inherent societal conflict: to what extent may one retain individual freedoms without creating a non-functioning individualistic society?

1. Resolves an Existing Problem.— Divorce supporters claimed that marriage breakdown exists in Ireland and action must be taken to help those in this tragic situation.[98] Divorce supporters argued that banning divorce does not eliminate marital breakdown.[99] Supporters believe that divorce opponents ignore modern reality.[100] Supporters pointed out that 75,400 Irish marriages had broken up in 1993.[101] Pro-divorce groups believe that those involved in broken marriages should not be punished by being forbidden to remarry.[102]

Some people who were involved in broken marriages move on and begin new families. Yet these families are not recognized by the law, or by Irish society.[103] Supporters believe the illegitimacy of the new family negatively impacts upon both the parents and the children.[104] The government's information campaign echoed these same concerns.[105] However, the argument that divorce should be legal because marital breakdown already exists in Ireland is weak. It ignores the underlying social problems that lead to marital breakdown. Divorce will not solve this problem. The State

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97. *Id.*
98. *Id.*
99. Mark Brennock, *Divorce Bill Passes Stage Without Vote*, IR. TIMES, Oct. 13, 1995, at 6.
100. *Id.*
101. DeBreadun, *supra* note 64.
102. Brennock, *supra* note 99.
103. *Id.*
104. Notwithstanding increased Government support, marriage breakdown is still with us and in increasing. However the Constitution and our laws fail to give legal recognition to the position of irretrievable breakdown experienced b large numbers of spouses. We have legal remedies — the right to remarry. Central to the Government's position on divorce is the need to protect the Family and the institution of marriage, while at the same time providing remedies for the increasing number of cases of irretrievable breakdown.

See The Right to Remarry: A GOVERNMENT INFORMATION PAPER ON THE DIVORCE REFERENDUM, Sept. 1995, at 7.

105. Carol Coulter, *Points to be Thrashed Out in the Debate*, IR. TIMES, Sept. 2, 1995, at 6.

should address the underlying social concerns instead of dealing solely with the consequences.

2. The Right to Remarry.— Divorce supporters also claimed that individuals have a right to remarry.[106] Article 40.3 of the Bureacht na hEireann, section 1, addresses the personal rights of Irish citizens.[107] The seminal case addressing personal rights is *Ryan v. Attorney General.*[108] Prior to *Ryan*, it was assumed that personal rights were limited to "life, person, good name and property rights."[109] In *Ryan*, Justice Kenny rejected this notion and claimed the constitution set up a Christian and democratic state. He further stated that the citizens of Ireland should enjoy all of the personal rights appropriate to such a state, including bodily integrity, right to free movement, and the right to marry.[110] One group opposed to divorce presented a document refuting the notion that one has a "right" to remarry.[111] The group believes that remarriage is not a universal right, because it benefits some at the expense of others. Because remarriage may ruin the life of another, it can not be a universal right.[112]

3. Reunification of Ireland.— Another argument used by divorce supporters was the effect the results would have had on the potential reunification of Ireland. Supporters claim that so long as Ireland retains its Roman Catholic laws, the majority Protestant Northern Ireland will reject the prospect of unification.[113] Critics claim that the Roman Catholic influence in the constitution is partitionist in character.[114] Accordingly, in order to reassure Northern Ireland that the Catholic Church does not control the Isle, the critics argue that divorce should be legalized.[115]

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106. The State guarantees in its laws to respect, and as far as possible, by its laws to defend the personal rights of its citizens. IR. CONST. art. 40.3, § 1.

107. (1995) I.R. 295 (S.C.) (Ir.).

108. MORGAN, *supra* note 7, at 15.

109. Ryan v. Attorney Gen., *supra* note 107.

110. The group, "The Committee of Lawyers Against the Amendment" published an analysis document in early November, 1995. *See* Nuala Haughey, *Remarriage "Not a Human Right,"* IR. TIMES, Nov. 10, 1995, at 5.

111. *Id.*

112. Garret Fitzgerald, *The Double Paradox of Ir. Division*, IR. TIMES, Sept. 17, 1995, at 10.

113. *Id.*

114. *Id.*

115. *Archbishop Warns of Marital Failure Crisis*, IR. TIMES, Aug. 28, 1995, at 4.

C. *Divorce Opposition*

While the government and other divorce supporters rallied behind the amendment, those opposed to divorce focused on the ill effects of divorce on society. While much of the ideological basis for the divorce opposition was grounded upon fear of a society too focused upon the individual, perhaps the divorce opposition sacrificed the separated for its own moral high ground.

1. Changes Nature of Marriage.— Those opposed to divorce focused on the detrimental effects divorce will have on society.[116] They claim divorce will alter the nature of marriage and undermine it as an institution.[117] According to Mr. Finlay, the attorney who wrote the position against divorce for the government's booklet, the law will no longer define marriage for life; now the law "undermines, and devalues marriage."[118] The following legal analogy may clarify his argument. When two people enter into a contract, they usually set a required period during which the contract is effective. If either party breaks the contract before its completion, the other may seek legal remedies. Consider a contract, whose terms require that it continue forever. One would only enter into such a contract after significant reflection and balancing. But now consider a contract which either party may break at any time for nearly any reason. Such a contract will be more whimsically entered into, and more often terminated. Although comparing marriage to a simple secular contract may repulse some, such a comparison exemplifies the anti-divorce argument. By allowing spouses to terminate the marriage, the essence of marriage as permanent is lost.

2. Effects upon Society.— Opposition to divorce was based on its destablilizing effects as well.[119] Leo Cash, an English family lawyer, advised Ireland to examine England before legalizing divorce.[120] In an article, Mr. Cash points out that the living standard of the divorcing couple plummets, causing England to

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116. Coulter, *supra* note 105.
117. *See supra* note 104.
118. Coulter, *supra* note 105.
119. Leo Cash, *Easy Divorce Brings High Social Cost*, IR. TIMES, Sept. 29, 1995, at 14.
120. *Id.*

spend 180 million pounds per year on Legal Aid.[121] Mr. Cash attempts to refute the notion that separation is better for children than a home where parents are constantly fighting.[122] Because of the effect upon children, he suggests making divorce more difficult to obtain for couples with children.[123] Those opposing divorce point to numerous studies from the U.K. linking family breakdown to various social problems including delinquency, crime, drug abuse, and a spiral of dysfunctional families.[124] But if marriage breakdown exists in Ireland without divorce, these results may be inevitable.

3. Increased Marital Breakdown.— Those opposed to divorce also contend that the availability of divorce tends to increase the rate of marital breakdown.[125] Studies of countries in which divorce is legal show an increase of divorce when it was first permitted and a steady increase in divorce rates generally.[126] Although the relevance of studies conducted in other cultures to the future in Ireland is unclear, the dramatic increase in judicially sanctioned separation in Ireland since the Judicial Separation Act of 1989 was enacted suggests that those studies may accurately predict Ireland's course.[127]

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121. According to a recent English study published by the Joseph Rowntree Foundation, Children Living in Re-Ordered Families Social Policy Finding no. 45, as cited in Cash, *supra* note 119, children of parents who had separated were more likely than others to suffer from low self-esteem and psychosomatic illnesses and experience difficulties at school and problems with friends. Children of parents who have not separated but were in conflict showed similar, but much less marked, tendencies and the extent of their problems was much closer to that of children of conflict free families. *Id.* Therefore to argue that for the sake of the children, it is better for an unhappy couple to separate than to stay together is more often than not wishful thinking on the parents' part. *Id.*

122. *Id.*

123. *Id. See also* Mavis McClean, *Child Support in the UK*, 31 HOUS. L. REV. 515 (1994) (addressing problems and changes in UK family law).

124. *See* Coulter, *supra* note 105.

125. For example, before Canada broadened divorce by enacting the Divorce Act of 1968, the divorce rate was 54.8 per 100,000 people. By 1978, the rate had risen to 243.4 per 100,000 and by 1988, the rate was 308.1 per 100,000. Claire L'Heureux, *Economic Consequences of Divorce: A View from Canada*, 31 HOUS. L. REV. 452, 457 (1994).

126. Coulter, *supra* note 4.

127. Coulter, *supra* note 105. A debate is currently raging in the United State regarding the "feminization" of poverty which many claim has a root in divorce. In 1994, Georgetown Law Journal published a collection of papers addressing the economic effects of divorce upon women. *See generally* 82 GEO. L.J. 2119 (1994). An Economist at the University of Chicago recently addressed the economic impact of divorce upon women and children, and upon society as a whole. *See*

4. Effects upon Women and Children.— Another argument made by those opposing divorce is that divorce impoverishes women and children.[128] Although divorce drastically reduces their standard of living,[129] many women and children already are subjected to this by the Judicial Separation Act of 1989. The Judicial Separation Act provides for the distribution of property and support payments similar to what occurs under the new divorce amendment.[130] The availability of divorce may increase the number of women and children in this horrible situation, and this is a threat regardless of the legality of divorce.

D. The Catholic Church and the Referendum

The position of the Catholic Church is not simply that divorce is wrong, but that a society which focuses upon individual rights at the expense of the societal good will suffer.[131] Members of the Church warn of the "cult of excessive individualism" which places the individual man or woman on a pedestal at the center of things and does not allow for a community in the "true sense."[132]

Bishop Lee believes that in an individualistic society, each person demands his or her own rights no matter what the consequences for others.[133] Consequently, in such a society it is the weak, the young, and the very old who suffer.[134] According to Bishop Lee, such excessive individualism leads to a false idea of freedom, because individuals believe they may do as they please without consideration for the rest of society.[135] Bishop Lee proclaimed that such a belief is detrimental to others in society.[136] Excessive individualism breeds competition and greed, which in

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generally 2 U. CHI. L. SCH. ROUNDTABLE 517 (1994).

128. In California, during the year following a divorce women and children experience a 73% decrease in their standard of living. Also, in Canada, 46% of divorced women with children live below the poverty line, even when spousal and child support is taken into account. *See* L'Heureux, *supra* note 125, at 460.

129. Coulter, *supra* note 105.

130. Christine Newman, *Cult of Excessive Individualism Leads to False Idea of Freedom*, IR. TIMES, Oct 3, 1995, at 4 (referring to a homily by Bishop Lee in which he spoke of the upcoming referendum).

131. *Id.*

132. *Id.*

133. *Id.*

134. Newman, *supra* note 130.

135. *Id.*

136. *Id.*

turn destroy societies.[137] Bishop Lee believes individualism, competitiveness, and a false idea of freedom undermine the interpersonal relationships which are the basis of community living.[138] While individual priests such as Lee made pleas to their parishes, the Irish Bishops united and wrote a manifesto opposing divorce.

The Bishops of Ireland published their manifesto on divorce in the *Irish Times*.[139] The Bishops view marriage as an unconditional promise which becomes conditional when a divorce may be obtained. Therefore legalized divorce changes the essence of marriage.[140] The Bishops stated that society reveres marriage because of the permanent bond marriage creates.[141] Once the State allows for remarriage, society will no longer value marriage to the extent it does without divorce.[142]

Obviously, the Bishops of Ireland have an interest in advocating what they feel is best for Ireland. At one time no one would have doubted the influence of The Church on Irish citizens. Today, with the legalization of divorce, at least a slim majority did not heed the call of the Church and made their decision to support divorce regardless of requests made from the pulpit.

E. The Results of the Referendum

In order to understand the implications of the Referendum one should consider the voting patterns of Irish citizens.

The amendment was accepted by a mere .3% majority, the difference being only 9000 votes.[143] The *Irish Times* conducted a voter profile poll on the day of the Referendum. Excluding undecideds, the poll differed from the actual outcome by only 1.3%.[144] Age groups differed greatly with two-thirds of voters in the eighteen to thirty-four categories voting "Yes," while two-thirds of voters over the age of sixty-three voted "No."[145] Thirty-three percent of voters aged thirty three to forty nine voted "Yes."[146]

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137. *Id.*
138. *Bishops's Statement*, IR. TIMES, Oct 27, 1995, at 6.
139. *Id.*
140. *Id.*
141. *Id.*
142. David Gwynn Morgan, *Hanafin Case Likely to Center on Wording of Referendum Act*, IR. TIMES, Dec. 4, 1995, at 6.
143. Coghlan, *supra* note 62.
144. *Id.*
145. *Id.*
146. *Id.*

Women and married people divided evenly on the Referendum,[147] while thirty-seven percent of men voted "Yes" and thirty-eight percent of singles favored legalizing divorce.[148] Widows and widowers were the largest group opposed to divorce at seventy-one percent.[149] Separated people were most in favor with seventy-seven percent voting "Yes."[150]

One analyst, John Waters, cautioned against basing the split on a simple urban-rural divide.[151] Factors such as location and exposure to outsiders may have been equally influential.[152] Waters believes that people residing in inland areas, as opposed to coastal regions were more likely to vote "No" to the Referendum because these areas suffer high emigration and tend to have little contact with outsiders through tourism.[153] Accordingly, these areas are more conservative and tended to vote "No" to legalizing divorce. Waters points out that not only small towns, but also the most inner sections of large cities fit this description.[154]

Some ponder the results, considering whether government spending or scandals within the Catholic Church most influenced the voters. However, these narrow results are only conclusive of the fact that Ireland is divided on this issue.

F. Two Key Lawsuits

The possible influence of the government's campaign prompted two lawsuits, which those opposed to divorce hoped would nullify the results.

In October of 1995, Patricia McKenna of the Green Party initiated a lawsuit seeking to enjoin the government from spending money in favor of divorce.[155] On appeal to the Supreme Court, McKenna succeeded. A week before the polling day, the court declared the government's campaign for a "Yes" vote violated the Constitution.[156] The government was ordered to cease its pro-

147. *Id.*
148. Coghlan, *supra* note 62.
149. *Id.*
150. *Id.*
151. *Id.*
152. John Waters, *Split on Divorce Not a Simple Rural-Urban Divide*, IR. TIMES, Dec. 12, 1995, at 4.
153. *Id.*
154. *Id.*
155. *Id.*
156. Christie Newman, *Hanafin Asks Court to Rule Divorce Poll Null and Void*, IR. TIMES, Jan. 12, 1996, at 6.

divorce campaign.[157] However, the government did not fully comply with the order. That weekend, an advertisement supporting the Referendum ran in the *Sunday World*.[158] While victorious in ceasing governmental spending in favor of the Referendum, McKenna's suit also paved the way for a second suit seeking to have the Referendum overturned.

Mr. Des Hanafin, a former senator, brought suit in the High Court claiming the government illegally influenced voters through unconstitutional spending.[159] Mr. Hanafin based his claim on a 1994 act dealing with unfair referenda.[160] The High Court dismissed his claim, but Hanafin sought an appeal from the Supreme Court.[161] While Mr. Hanafin's ultimate goal is another referendum, it is unclear whether he will be successful.

VI. Is Ireland a Catholic Nation?

The Catholic Church's position on the Referendum was clear: divorce is detrimental for society and the individual.[162] The close outcome of the Referendum indicates that the Church had some persuasive effect on Irish citizens. However, the results certainly indicate a declining influence.

To many, Ireland is the prototypical Catholic nation. Historically, the Church and State have maintained a close relationship. More recently, there are many who believe the time has come for the government to disassociate itself from the Church and its values.[163] Although 91% of Irish citizens claim to be Catholic,[164] the Church still was unable to sway the majority to vote against the referendum. Does this result indicate that Ireland is no longer the Catholic nation it once was?

There are many in Ireland that are uncomfortable with the image of Ireland as a Catholic nation. One member of the government expressed joy over the opportunity to establish a new,

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157. Morgan, *supra* note 142.
158. Newman, *supra* note 156.
159. Morgan, *supra* note 142.
160. Newman, *supra* note 62.
161. Morgan, *supra* note 142.
162. In dismissing Hanafin's claim the court stated, "[o]ur people have a unique opportunity to look squarely at the pros and cons of removing the ban on divorce from the Constitution. We are in a position to see the sad consequences of divorce in several countries." Archbishop Clifford as quoted in, IR. TIMES, Aug. 28, 1995, at 4.
163. *Bishop's Statement*, *supra* note 138.
164. Hogan, *supra* note 20.

independent Irish image.[165] To her the Referendum symbolized a shift in Irish mentality: "we are finally growing out of the idea that we have to conform to some idea of being Irish."[166] A journalist described the changes in Ireland as a rebirth, claiming that during this process Ireland will dump the "dead hand of the Catholic Church,"[167] and send a message to Northern Ireland that the Church is no longer "in with the bricks of the Irish state."[168] To this commentator, legalizing divorce means a shift in public tolerance of double standards. It means a loss of power for the Catholic Church. It means a strong desire to placate those fighting for Irish reunification.[169]

While those opposed to a strong role of the Catholic Church in Ireland celebrated the Referendum's results, others attempted to determine what is causing the Church's declining influence in Ireland. According to former Prime Minister Garret Fitzgerald, there is an explanation for the waning power of the Catholic Church in Ireland. He attributes the Church's declining influence to Irish citizens who are distrustful of the Church because of its attempts to cover up clerical sex scandals.[170] One incident which may have cost the Church supporters includes an affair between Bishop Casey and an American divorcee.[171] Likewise, what disturbs many Catholics is the way the Church handled Father Brendan Smyth. Smyth, a pedophile priest, was allowed to continue practicing for thirty years, despite repeated allegations of sexual abuse.[172] The Church has since worked diligently to resolve these problems, as evidenced by this year's annual Bishop's conference, at which the main topic was clerical abuse, not the pending divorce Referendum.[173] However, apologies seemed to have little effect because a newspaper poll found seventy-two percent had lost confidence in the Catholic hierarchy.[174]

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165. Carol Coulter, *Divorce Referendum is Another Milestone in Secular State*, IR. TIMES, Sept. 25, 1995, at 4.
166. Brennock, *supra* note 99.
167. *Id.*
168. Lesley Riddoch, *A New Ireland as the Brakes Come Off*, THE SCOTSMAN, Oct. 13, 1995, at 15.
169. *Id.*
170. *Id.*
171. Garret Fitzgerald, *Divorce Debate Comes at a Critical Time for the Church*, IR. TIMES, Sept. 16, 1995, at 6.
172. Quintin Peel, *Shaky Pillar of the Community*, FIN. TIMES, Oct. 7, 1995, at 9.
173. *Id.*
174. Riddoch, *supra* note 168.

Even Catholics criticize the Church. Describing the Church's stance as unfair and unrealistic, Sister Margaret MacCurtain believes that when love fails and is dead, both the Church and the State have an obligation to free the loveless couple.[175] The Church is fighting an uphill battle when its values are discredited not only by politicians and the media, but by members of the cloister as well.

Members of the government have been openly critical of the Church which divorce supporters took as a sign of hope. After the Church issued its formal campaign statement condemning divorce, Prime Minister John Bruton immediately contradicted it.[176] Mr. Bruton stated that the Church's attitude was "unproductive," and that broken marriage is a growing reality in Ireland regardless of the Church and its extensive influence on the opinions of many.[177] At one time, the State worked closely with the Catholic Church, but now as Ireland changes, the Church is no longer an equal partner in the Ireland of today, or apparently, tomorrow.

Although the State was critical of the Church, the criticism was not unwarranted. The Church's appeals were not as saintly as one might imagine. Just as the government used manipulative propaganda, so too did certain members of the Church. For instance, one priest used scare tactics in his homily.[178] He warned the congregation that those who divorce will be unable to receive the Sacraments, including the anointing of the sick.[179] Officials from the Church made quick public statements refuting that the priest had made controversial and false claims.[180]

Though one may not agree with the values of the Catholic Church, to argue the Church had no role to play in the Referendum and Irish society in general is absurd. The Catholic Church remains the spiritual and moral leader for many Irish citizens and divorce and family life are spiritual and moral issues. For decisions affecting such issues, the Church has a most prominent role. Those who choose to heed the call of the Church — and, as evidenced by the results of the Referendum, those who chose not to — may do so, as well.

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175. *Id.*
176. Carol Coulter, *Pro Divorce Campaign Urges Yes to Advance Tolerance*, IR. TIMES, Oct. 13, 1995, at 7.
177. James F. Clarity, *Church and State Face Off in Referendum on Divorce in Ireland*, N.Y. TIMES, Oct. 29, 1995, at 19.
178. *Id.*
179. Clarity, *supra* note 2.
180. *Id.*

V. Conclusion

The Referendum to legalize divorce concerned more than just the right to remarry. The emotional campaign and narrow vote to legalize divorce was a culmination of a nation divided. The Catholic Church helped mold Ireland, basing many of the nation's laws on traditional Christian morality. The nation is divided between those who wish to cling to that traditional Catholic Ireland, and those who wish to join the modern trend by focusing upon the rights of the individual, with government free from religious influence. The Referendum did not mend this division; indeed, it may have intensified it. As traditionalists grapple for the past and modernists fight for future change, what will happen to Irish society?

The two sides may banter back and forth over what certain studies mean, and how specifically Ireland will be affected. Legalizing divorce will have a dramatic impact on Irish society. For those involved in second relationships, their children will no longer by shunned by society as "illegitimate." But what about the children who are the offspring of a marriage which ends in divorce? No doubt Ireland will see generations of shared-custody children, such as in the United States. One can only hope that Irish citizens, the Irish government, and divorcing Irish parents will take precautions to minimize the damage divorce may create. One group that may play a role in aiding families suffering through divorce is the Catholic Church.

The ramifications of divorce may pose a serious problem for Ireland in the future. But a divided Irish society poses a problem for the nation today. Prime Minister Bruton expressed the need to reflect on why so many citizens voted against the Referendum.[128] In order to plan for the future the government must realize that the nation is sharply divided. The nation will divide even more should the government make rash movements towards modernization. More than forty-nine percent of the population does support major changes in Irish society. Perhaps the Irish government should spend less time worrying about keeping up with the "modern" world, and more time addressing the major social schism in its own nation.

Anna Margaret McDonough