

IRISH REFERENDUMS INTERIM REPORT FINAL

Brian Walker 16 January 2021

Before we come to the interim report, the a priori question should be asked: what are these referendums for? The answer lies not in how they might be conducted but in the reasons for holding them. A simple binary choice is appropriate to allow proven majorities north and south to achieve their wish for a united Ireland. Why so much tenderness towards unionists? You call a referendum to win it. There will be a loser. Reconciliation may come later. But if unionist consent is built in to change Northern Ireland's constitutional status even if unionists fall below a majority, the answer will be more complicated. The parties in power in the Republic have yet to make their position clear.

However fastidiously the Working Group operate on the basis of procedure, with the best will in the world it is impossible to avoid making political judgements. In his webinar contribution, by predicting a border poll in a decade, WG member Brendan O'Leary set his own tone and tempo. He urged unionists "to stop being ostriches and become foxes", and prepare for the referendum after next. Planning has its natural momentum. It contains within it the dynamic for change and begs the question of whether referendums are inevitable or even desirable. Controversy with its background of spilt blood is built into the exercise. Scepticism not only from unionists can go by default. This is apparent in some of the recommendations.

The threshold

The legal case against a weighted majority or parallel consent apparently rests on the single phrase "a majority." It should be argued out and the political case at least discussed. A border poll on a simple majority threshold in the foreseeable future would likely produce at most a narrow majority for unification after a brutally sectarian contest. This is the prospect before the idealists of the Working Group and everybody else. Some leading nationalists north and south long for the element of cross community support to take the communal edge of a nationalist victory. Unionists will feel disadvantaged at the outset by a well coordinated nationalist north- south strategy for twin referendums. It is an inevitably asymmetrical exercise. Too bad. Anything more than 50% creates a unionist veto and makes nonsense of the whole exercise. So the battle of the threshold is lost before it begins. It should be recognised however that despite the WG's best endeavours, while agreement may be reached easily enough on the rules for conducting the referendums, the governments may be on opposite sides in the contest, they have little control over the conditions for calling them and lack public interest authority for deferment in a crisis.

The role of the Secretary of State

The High Court has endorsed the secretary of state's lonely discretion. Nevertheless it is remarkable to find a group formed by the Constitution Unit failing to question the opaquely exercised sole discretion of a UK minister unaccountable to the people affected or any legislature, apparently on the basis of opinion polls. Whatever happened to accountability and transparency? When does he start counting? Has he started already? What criteria does he use? How many opinion polls, private or public over what period? Will he, ought he to take into account the nationalist share of the vote in the next Assembly elections? Will he take a gamble on 45% or wait for it to nudge up a couple of points closer to 50% or even over it? Should a border poll be called on the question of constitutional preference alone without taking into account more pressing priorities? This is a crucial question. Will the Secretary of State consider detailed attitude surveys such as Northern Ireland Life and Times or Liverpool University's General Election Survey of 2019 which test the degree of commitment, weigh other priorities and take into account non voters in elections who are more likely to vote in a referendum? Public disclosure of the range of polling, private as well as public, would place everyone on an equal footing to make their judgments on the same data. Transparency would compel the fuller public debate protagonists are at present avoiding.

The remarkable lack of curiosity reflects the common belief that the time for answers has not arrived. It would also be honest to admit that the aim of 1998 to insulate power sharing from the border question is no longer valid. Is it not time to face the issue head on, to piss or get off the pot? The democratic solution is surely found in a simple majority Assembly vote in favour of a border poll in stated terms within a specified lifespan, unless there is powerful evidence to the contrary which the UK minister could not ignore. The Working Group should flush out his criteria and set out their own standards.

Plan and prepare

"Delineating the referendum options" takes us inexorably into politics. Planning here means planning for a united Ireland with consolation prizes for unionists. Attention is concentrated on giving shape to a united Ireland, much less on remaining in the UK. The Interim Report graciously concludes that "*there may be scope for developing aspects of the Agreement further*". But such ideas are only vaguely referred to. Although still very much work in progress their absence is an unfortunate omission. To supply them should be a major subject in the final report.

"The status quo would not.. necessarily require any further elaboration." But what is the status quo? The whole concept of Northern Ireland in the UK has been transformed since 1998. It is better expressed as the British-Irish hybrid that actually exists and is open for

further development without cutting the British link. Or is it to be described in terms of traditional sovereignty still favoured by the Conservatives and the unionist parties that has served them so ill since 2016? Unionists will have to make a choice. It has vital consequences for the referendum questions. Parties may propose, but can they veto? Who would convene a decision, write the options papers and sign them off? Surely not the Electoral Commission alone?

The political outlook

“I believe events will move a lot faster than any of us could ever envisage. Just look at Brexit, who could have predicted that five years ago? When Scotland goes independent, we are looking at the end of the UK. I also think we need to consider the strong possibility that English taxpayers will get fed up subsidising us and tell us to get lost:” (from Slugger O’Toole).

If euphoria is a guide, it would be hard to imagine a bigger catalyst for unity than Brexit. Although battle lines in the North have yet to be formed, it is only a slight exaggeration to say that looking at morale, nationalist politicians think they have it in the bag and are only waiting for the right moment, while unionists in disarray fear they’ve already lost. There are three sobering balancing factors. Brexit is less of a gift to the cause of unity than a cross community complicating factor. To be frank, trade is boring if prices are kept down and the shelves are full. Who cares if more of them are stocked from Dublin? The devil is better identified in the detail of the joint and specialised committees. Secondly, a closer look at polling suggests that unification has not won the numbers or commitment its supporters assume. How likely is a rising curve? Finally, a demanding agenda is blocking a clear sight of unity; post-Covid recovery and the battery of reforms promised in the New Decade, New Approach agreement to restore Stormont which was demanded by voters after three years of suspension. This is the third way – making the Assembly work. Set alongside it, agitation for unification seems like displacement activity.

The binary model is far from perfect. Nationalists are more divided over continuing IRA influence on Sinn Fein and their place in the canon of Irish independence than they are united in favour of focusing on a border poll. The prevailing attitude is, let it happen if it will. It comes as no surprise that parties are hedging on future strategy. Sinn Fein failed to make ground with the alternative of unification even during the Assembly standoff. In 2019 remainder local electoral pacts produced DUP losses. SDLP leader Colm Eastwood has declared: “For Ireland to be united Northern Ireland has to work”, while telling MPs, “the Union is dead.” Is he expecting the Scots to do his work for him? Is he inching towards unity at unionists’ pace?

For next year’s scheduled Assembly elections, it would be a surprise if a commitment to border poll within the lifetime of the next Assembly mandate figured in any party

manifesto. All parties deplore the outworking of Brexit for different reasons, and all are committed to making it work better. The centre ground is the most likely beneficiary of a blame game against the DUP over Brexit. All minor parties hold the DUP and Sinn Fein jointly responsible for the delays and indecision that still plague the functioning of the Executive.

The DUP will have to regroup after their disastrous miscalculations over the backstop, followed by Boris Johnson's "betrayal". Former leader Peter Robinson's warning against border poll denial has so far not been heeded. Reading from an old script their leader Arlene Foster hopes the Assembly will vote itself out of the EU single markets in 4 years time. Yet she sees the single market for goods as a "gateway of opportunity." Why then close it?

In 2024 despite a terrible start, few expect the Assembly to terminate the "border in the Irish sea" by the stipulated simple majority. It is at least possible to imagine that the Protocol will create the best of both worlds through the machinery of the joint and specialised committees. All parties involved, governments and the EU as well as local parties, have every incentive to make it work.

To form the pan nationalist front north and south required to mount an effective unification campaign, all other nationalist parties would have to abandon their opposition to Sinn Fein as a less than democratic party still influenced by a surviving IRA. That opposition currently marks the divide of Irish politics. And yet if the present Fianna Fail / Fine Gael coalition fails, the obvious alternative would be a FF/ Sinn Fein or even SF/ FF coalition after the next Dail election due early in 2016. To maintain credibility, Sinn Fein in government north and south must stipulate early referendums as a condition of forming a successor government. Thus the justification for predicting referendums by the end of the decade. They would be Sinn Fein's referendums.

Attitudes in GB to Northern Ireland in the Union

"It is for the people of Ireland alone" to decide "without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given?" (The Good Friday Agreement)

It would be a signal achievement to discover the degree of commitment at Westminster to the Union as a whole, (Scotland in particular) and the outlier Northern Ireland.

It is hardly news to assert that this Union has always been vulnerable. Until GB devolution in 1999, Northern Ireland was an appendix of the British unitary state. WG member Brendan O'Leary has invited readers of the interim report to offer their thoughts on what "without external impediment" means, giving a broad hint that in his opinion, the phrase imposes strict neutrality on Westminster in any unification campaign. How long would that campaign

last? Up to three years? No such constraint would apply to the Republic's referendum apparently. "External impediment" more obviously confirms the absence of a Westminster veto on holding the first border poll and bans financial incentives amounting to bribery, in the styles of 1707 and 1800. A ban on free speech is unconscionable. There is no necessary conflict between the proper conduct of a referendum and the government supporting one option (Labour and the Lib Dems are more likely to stay neutral with unification sympathies; the SDLP is still Labour's sister party).

The consent principle is no longer the unionist shield it once was. Indeed the UK government appears to have introduced a condition which unionists will dislike but yet could be their salvation. In defence of the now restored withdrawal agreement the UK government warned early in 2019:

"Avoiding a hard border is itself critical to meeting our commitment to strengthening the Union. As the Prime Minister has said, Northern Ireland's constitutional future is a matter for its people, and it is essential therefore to listen to the people and communities there who do not want a return to a hard border or disruption to daily life. The Union will only endure - as is this Government's clearly expressed preference - with the consent of the people of Northern Ireland."

To the constitutional "guarantee" the UK government seems to have added unionist compliance with the Protocol. It points the way to a pro Union strategy embracing a hybrid British-Irish future and north-south interdependence which unionists would be wise to adopt.

Think tankery and lobbying

Northern Ireland urgently needs its own equivalent of *ARINS (Analysing and Researching Ireland North and South)* and other parts of the substantial research base in the Republic. It must have GB links such as those forged by the Constitution Unit during the early period of devolution. In a previous article I set the WG an impossible task of follow up and research. The idea behind it and an "independent commission on good governance" is to create a resource for reviewing Executive performance and provide fake news correctives in debate. Is Pivot up to the job? Scrutiny of previous fresh starts was always thwarted by inertia and foot dragging. This should not be tolerated in future. The rough model is the Peace Monitoring Reports written successively by Paul Nolan and Robin Wilson in the early noughties. These were in fact excellent performance reviews of the whole scene. The model should be expanded into an interactive website and financed by civil society to guarantee independence. An independent forum is essential as lobby groups in favour of one side or the other (so far mainly nationalist) are emerging fast. Intercommunal dialogue is well established and should develop on a politically open agenda.

Conclusion

I suggest that the final report should let in more air from the group's discussions, perhaps as essays in an appendix. How conclusions were reached may be as interesting as the conclusions themselves. A statement of principle and public value would be valuable as an answer to some criticism. The ultimate defence is academic freedom.

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