

Congratulation on thoroughness of the analyses and report.

Main points

Background

The relationships between the people of Ireland and Britain are very longstanding; there are genetic data showing strong NE Ireland W and SW Scotland; NE and NW England; E and Wales; S and S British, links which have accrued over several thousands of years. We never have been as divided or had such separate identities as some would make out. The influence of De Valera in the middle part of the 20th Century runs deep in the minds of unionists, and arguably is still evident throughout the structures and institutions of modern Ireland albeit weakened. Protestants declined in number in ROI whilst Catholics increased significantly in number in NI. Had De Valera not pursued such a conservative, theocratic state and the unionists not been so defensive, we might not be in the situation we are in. Reforms addressing discrimination in employment and housing date back to 1972. Discrimination on the basis of class also affected working class protestants who continue to live in as deprived conditions as their catholic counterparts. All representatives and parties have a moral responsibility to promote the interests of all the people they represent even where their views may be contrary to their own. There is a decline in support for democracies worldwide because of the actions of some elected representatives. Perhaps we all need to re-read the basics.

It is difficult to unravel the process of a referendum from individual, party and popular political criteria and ambitions. A successful referendum would be one where no one gets hurt. Unfortunately, there are still plenty of people around with the means and the motivation to do great harm. Whilst the referendum process is academically interesting it is critical that it can lead to a permanent, peaceful, and governmentally effective outcome. Failure to address the demand for a referendum and/or rejection of change are likely to perpetuate sectarian divisions and conflict.

There is a major issue of the power of the Secretary of State who is key in initiating a referendum in NI.

There is a tacit assumption that a NI referendum is solely a border poll and specifically about NI and ROI reunification rather than wider constitutional change throughout the island.

Preparation for a referendum is more pressing due to the democratic deficit created by Brexit and the inherent political problems, particularly in the NI, which have led to periods without government in both jurisdictions in recent years. None of the three strands of the GFA have been effective. Further, the longer constitutional change is delayed, the greater the gulf between North and South and the magnitude and cost of the task of creating a working consensus within a single state if that is the ultimate goal.

Political parties must be kept at arm's length from the initiation of the referendum process and remain so to its conclusion. Republicans and unionists have an uncanny knack to promoting the interests of each other and a referendum for change would render both unionist and nationalist/republican parties redundant. A vote for the *status quo* would perpetuate and widen divisions.

Particular points

Executive Summary

4. The present situation is much more volatile than the report suggests. Brexit has not made a poll more likely but it has placed NI in an even more ambivalent position. The UK government is acting and is perceived as a *de facto* English Government and is regarded as untrustworthy and shambolic by non-Etonians both sides of the Irish Sea.

P11 The legal context should be followed but political considerations cannot be ignored if it has undesirable outcomes. Brexit is a case in point. The electorates in both jurisdictions must have a clear idea what they are voting for. More specifically, unionists and others in NI must be presented with a clear outline of what constitutional reform entails if there is to be a majority for change as opposed to a sectarian headcount.

17. Presentation is everything. A positive referendum outcome is more likely if change accommodates hitherto opposing positions rather than a poll of immutable, historical positions. In other words, working towards a referendum and developing a vision of the future are intertwined. The former will be lost or never happen without the latter.

22. No political party in either jurisdiction should be allowed to own the proposition of major constitutional change. Neither should any have a veto on change e.g. by not engaging in discussions. The proposition of change emanating from a party hitherto closely allied to paramilitary activity is unlikely to be embraced by people under threat. Similarly, parties associated with sectarianism and discrimination are not going to win over those holding grievances. The emphasis should be on discussions open to all.

27. It is not a matter simply about change in the constitutional position of NI and how it fits into an all island state. The process should be about constitutional reform and identity throughout Ireland. For example, it is generally held that the power of the RC church in the Republic of Ireland is less than in the past but it is still a dominant force in health and education. The existence of a National Health System is an island concern as is the role of Ireland in international treaties and organisations. There is an opportunity to change all of the position of all people living on the island of Ireland for the better.

32. The GFA vests too much power in the Secretary of State in connection with calling a referendum. The vested interests of political parties in Belfast, Dublin and London, and the misuse of data from polls and elections which are not specifically on long term constitutional change, will lead to a period of uncertainty, counterclaims and the potential for civil disobedience or a resurgence of paramilitary activity.

34. Any mention of a border poll results in deepening divisions. Unionist opposition could be disengagement with discussions leading up to a poll followed by a rejection of any change they were not party to. There has to be a subtler approach. Option 3 could be amended to provide for principles underpinning new constitutional arrangements being laid out before the first poll. Two NI polls, separated by 12 months, the first requiring a vote for a border poll, simultaneously relieves the Secretary of State from the responsibility, and secondly, given a positive outcome, requires unionists to engage. It has the further advantage of making sure there is a great deal of detail before the electorate, as there was in the GFA, in the second poll. People who feel insecure will not opt for change unless they feel what they are voting for is legally binding and explicit rather than inferred or

the utterance of someone they do not trust. It is a question of winning over the support of some unionists, and unaligned voters in order to carry the proposal. A take it or leave it option will not succeed as some nationalists will vote for the *status quo* in the anticipation that to do otherwise will result in civil unrest and sectarian violence. The double poll – agreed principles in outline – poll 1 referendum yes/no – detailed constitutional change for the whole of Ireland yes/no - builds confidence and thus has a higher chance of success. Of the options outlined, only 2 has any chance of attracting more moderate unionists. However, it does not overcome the potential inertia of the Secretary of State. Amend option 3. See further below.

41 In that constitutional change would affect the whole island and also be a new beginning, the referendum could be regarded as one for or against a second Republic. The Germans and French, for example, have progressed from one republic to another. A new Republic would excite many unaligned voters in NI and ROI especially the young increasing the chance of acceptance at the poll as well as during implementation.

19 The franchise and conduct of referendum should be included in the principles outlining a new constitution. These may not be changes invoked during the referendum process but could be important indicators of change. For example, lowering the voting age to 16, extending the vote to all residents and governance of funding political parties and electoral information would signal the intentions of inclusivity and intolerance of corruption to the electorate.

51. There is some urgency given the publicity given to a 'border poll' that (a) is pursued by nationalist and republican parties in NI (b) the feverish response of unionist parties to such proposals effectively ruling out any discussions (c) the increasingly ambiguous position of NI in the UK and EU undermining the representation of large segments of the NI electorate in London, Dublin and Brussels (d) and the questionable role of the Secretary of State continuing, and (e) longstanding issues in ROI with stagnation associated with civil war politics, exposed after the last general election. Civic nationalism is seemingly incapable of opening up the discussion regarding constitutional change to include unionists, whilst civic unionists are not open to discussions with nationalists. There is no forum for the two sides to meet and certainly there is no attention to the major part of the electorate that does not vote for either side. The immediate consequences are poor government in NI and ROI with many of the day to day issues people care increasingly neglected. We desperately need a venue where unionists and nationalists can present their worries and aspirations to each other with some hope of finding a way to accommodate the identities of both sides.

4.15 Replacing ROI constitution with a new all island one is possible if it has at least same democratic mandate – passed by both houses of parliament and a public referendum. Is there any reason a new constitution could not be put to public vote first?

4.28 I see the redundancy on have two polls on unification but two polls – one on whether a unification poll is held which may, may not lead to a second poll which would be on unification – is not the same.

4.32 The ROI Government could qualify what is mean by unification at any time, whether or not a referendum is called. This qualification of what is mean by unification is in turn critical to whether a majority in NI might wish for a referendum.

4.36 Without 'impediment' should include e.g. external financial or material support in favour or against the proposal. It would not be acceptable to have foreign governments, businesses, organisations or individuals biasing the outcome. It is not possible to police people of 'Irish descent'

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outside Ireland or Northern Ireland. It is possible to restrict those voting in a referendum to people normally resident on the island and to those born on the island.

4.39 Using the seven-year interval as before might be a good working model – i.e. following a yes vote, sovereignty would change within 3.5 years.

Under the GFA, if there is a vote against it is possible to have a referendum every 7 years until a yes vote results. It could be argued that the same principle of repeated referenda be applied to an initial yes vote. The premise is not specifically excluded. As the authors point out the GFA allows for the status quo and unification and no other arrangements. A yes vote is not reversible whilst a no vote can be reversed after 7 years. This is a fundamentally unfair arrangement but perhaps it is unavoidable. There is an argument that a yes vote should be followed by a further one-off confirmatory vote at 7 years. This might assuage antipathy from some unionists as well as making the referendum process more balanced.

4.42 Is it worth considering the rights of Irish citizens living in the UK with regards to travel, voting rights etc.?

4.51 The EU and the USA alone would put sufficient pressure on the UK to legislate in accordance with the wishes of the NI electorate. The form of unification and how Ireland relates to the UK and intends to operate internationally will also have a bearing on how the UK legislates or not after a referendum.

5.6 Who will police the referendum process? I.e. Ensure both sides stick to the rules regarding money, publicity, social media etc.

5.15 The GFA is an excellent model here. A proposal was put to the electorate, the details of which were laid down in a pamphlet distributed to all households and freely available beforehand. There was little doubt about what we were voting for – only how certain aspects would be implemented e.g. decommissioning. A decisive vote resulted. Since 1998, the advent of social media has demonstrated how well it can distort the democratic process. This must be avoided in any future referendum.

5.22 You have already made the point that both unionists and nationalists are heterogeneous and there should always be sufficient people within each to engage whatever the questions are asked. The responses of political parties and politicians might be coloured by their likelihood of a role after constitutional change and how quickly change might occur. Perhaps the process should include some guarantee of pension rights for politicians retiring as a result of the referendum process.

6.30 'Civic' forums/assemblies etc are not free from political bias and are in NI at least manipulated by parties. Any initiative which has any involvement of any political party will be regarded sceptically by the other side. Meetings involving large numbers of people will be a very inefficient way of garnishing public opinion and can fall foul of bad chairmanship, vocal individuals and interest groups. Properly structured opinion polls with written submissions might be a more efficient and unbiased way of identifying the views of the people of Ireland through the island.

6.32 A refusal to engage in representing the views of those they represent is in the same category as a failure to take up parliamentary seats. Some unionists facing the prospect of a new constitutional position will engage with discussions, other will not. Some will say they won't but they will, at some stage. Leave the door open to all shades of opinion and try to get people to give their view not those of a political party more interested in the past and their electoral base, than the future.

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6.35 The UK will have a continuing obligation to all the people of NI to ensure that their rights are respected including those with regards to UK citizenship. The analogous position is that of Hong Kong. Their responsibilities extend to the continued payment of pensions. The analogous position are pension rights of former EU employees.

6.43 The idea that the referendum is for unification or for reform within the UK is not tenable as it excludes maintaining the status quo. NI is already more devolved than any other part of the UK and already has a separate status within the EU Customs Area. If there are three options on the ballot there is an increased chance of a majority for unification and it is in breach of GFA.

6.49/50. Yes. There must be a great deal of preparation for any referendum which envisages change on a major scale. I am not aware of any unbiased civic forum which is not allied to unionism or nationalism. I put my faith in experts in the law and in particular constitutional law to collate information and opinions regarding a new constitution for the whole of Ireland in the 21st century. I want to see what a new Ireland might look like before I vote. The referendum process could be overseen by a senior international statesperson supported by Electoral Commissions in NI and RoI. It should be detached from all political parties. It will be for them to campaign for or against the proposal.

7.15 Economic analyses which do not take into account disparate movement of people, assets and costs between regions, do not fully estimate the likely costs and benefits of a change in sovereignty. Large numbers of people are educated at the cost of the NI purse but work and pay tax in London, and in old age return home to benefit from NI services in health and welfare, another cost to NI government. All but one region of the UK and probably RoI are apparently in negative budgets with only London and Dublin in the black. NI is no more a burden to the UK than is the NE of England or Munster is to RoI.

7.27 NI is trading as if part of the EU but NI citizens have no voting rights in Europe. This is an issue now.

7.28 Again in the interests of fairness to the very large numbers of UK residents living in RoI and Irish citizens living in the UK, full civil and electoral rights should be given to all normally resident in either jurisdiction.

7.32 I don't think those in favour of an objective sought over many decades will be happy about delaying constitutional change further. It will become like Brexit with no one too sure what is happening. Politically there has been an unwritten form of joint responsibility since the 1980s. Provided the ground work is done properly with regards to a referendum the post referendum process might be reasonably short and well within 7 years.

7.34 NI is not a possession to be handed from one owner to another. If a majority express a wish to change, this should be implemented reasonably without the need for an interim. Post referendum sovereignty remains with the UK during the completion of the preparations leading to the agreed date of the change.

7.48 A new all island constitution would include a Bill of Rights made law by the referendum.

7.50 The referendum process could be viewed as an act of reconciliation. Assuming a yes vote, all parts of the island should be treated equally from the outset. Abolition by law of sectarian politics might be the definitive act of reconciliation.

7.54 There is a danger that focussing solely on the position of NI and a yes/no referendum, the larger issue of constitutional and persistent problems in the politics and governance of the rest of Ireland are neglected. For example, three of the Ulster counties were deprived of their natural hinterland and identity under partition and areas of the west and south feel remote from Dublin economically and socially. A federated structure would reunify Ulster and provide the basis of symmetry in governance, the economic might of Dublin/Leinster offset by the three other provinces and important areas of government devolved from the capital. The federal model also eliminates the West Lothian question.

7.65 Given a yes vote unionism and nationalism ideologies are redundant. The GFA institutionalised sectarianism in Government in the NI. It is highly desirable that this model is not carried forward.

7.69 Politics in the South as well as the North are stamped by the history of the 19th and early 20th century. The Irish Constitution was written before the middle of the 20th century. It is not extravagant to introduce a totally new constitution which incorporates the prevailing aspirations of people in the 21st century. Germany and France e.g. have had multiple Republics. A new constitution for a new republic with new symbols and new political structures and parties will be embraced especially by those who have no direct recollection of the turmoil that affected the whole island in the 20th century. Sticking plaster reforms will only perpetuate a lot of questions and problems that current politics has failed to address.

7.71 Many issues raised would cease to be such problems if a new constitution was accepted in a yes/no referendum. A federal system would allow heterogeneity up to a point. The role of churches in health and welfare as well as educational provision is a Victorian hangover which if removed in a new constitution would have added benefits with regards to reconciliation.

7.74 There is a need for east-west structures and/or British Isles structures assuming Scottish and possible Welsh independence. Bodies such as the BBC could continue to operate throughout but equally Irish or Scottish or European competitors could operate as well. All sorts of business based outside the UK are involved in the provision of infrastructure such as railways.

7.85 The immediate aftermath of a lost referendum would be the resignation of the Secretary of State for NI. A North no vote and a South yes vote should result in no change without a further referendum and it would be nice if the Stormont Government actually delivered the GFA and other agreements. A South No and North Yes is practically inconceivable but to try to make sure that it doesn't arise a referendum should be about wider constitutional reform affecting everyone on the island not just the North. Hence, emphasis on a new constitution promoting pluralism and rights as well as regional identities throughout the island.

8.11 I see no likelihood of a career Westminster based politician ever calling a referendum favouring a quiet term of office and the status quo. Elections are not about constitutional change in NI; even where nationalist/republicans elected representative outnumber unionists, it could be argued that come a border poll enough nationalist/republican people will vote to retain the border. A few nights of unrest in east/west Belfast will convince the Secretary of State that now is not a good time. However, there is nothing to stop the Secretary of State asking the electorate for their views regarding a poll and acting on the outcome of that exercise thus effectively freeing *himself* of all blame for any ensuing mayhem.

8.15 Consulting the NI parties is unlikely to lead to anything other than opposing views about the outcome of a referendum i.e. unionists would always try to put off a referendum whilst nationalist/republicans would always argue the outcome is a foregone conclusion. If the Secretary of

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State does not consult the electorate then at least they could consult independent expert opinion e.g. polling organisations, academics, journalists.

8.17 Who will decide whether the Secretary of State is exercising power 'honestly' and in the interests of the people of NI? Have Secretaries of State a track record of such characteristics? We have had a number of duds since 1998 with recent reluctance to engage in NI politics.

8.23 Or simply illegal under the GFA.

8.25 The GFA clearly expects a vote to be taken when there is a likelihood of constitutional change. An undecided Secretary of State cannot decide to suck it and see so unionists might challenge the decision in court and then boycott the referendum refusing to comply with the outcome.

8.32 Were parties to actively pursue this strategy there would be a deepening of divisions. It would also give the balance of power in a border poll to non-sectarian parties which might abstain meaning that parties with perhaps only 35% of the electoral support or less might have sufficient MLAs to trigger a poll. This would not lead to a predictable or widely supported outcome.

8.46 There is merit in using a diversity of sources in judging the likelihood of a yes vote. As pointed out none of these sources directly addresses the decision required of the Secretary of State who is thus probably going to err on the side of caution, the status quo. Further, the Secretary of State will be pilloried by parties pursuing their own agenda. A very large sample opinion poll or a fully scrutinised poll for or against a border poll based on a sketch of what a new constitution might involve solves the issue and lets the Secretary of State off the hook and keeps the process away from the poisonous influence of the political parties.

8.47 Compare the turn out in the GFA referendum and at general elections. There are clearly people who voted in the former who do not vote in the latter. These missing voters could tip the balance and should not be ignored.

8.48 Some people might want one thing and vote contrarily in order 'to keep the peace'. Perception of threat of violence is a form of intimidation which the electorate should be protected from in a referendum. It should be an honest vote.

8.57 Stormont's structure and composition mitigate against a simple majority on anything. There will never be a majority of seats taken by one side of the constitutional divide as there are many seats taken by non-aligned parties unlikely to get off the fence.

8.83 A great discourse on opinion polls. Whilst there may be a role for well conducted opinion surveys, they cannot really give a reliable indication of how the electorate as a whole would vote in the event of a referendum. If counting votes at elections, counting seats and opinion polls are not allowing the Secretary of State a clear pathway to deciding on whether or not to have a referendum, perhaps some further thought should be given to preliminary poll asking the electorate whether or not they want a referendum on the constitutional future of the island.

8.87 My recollection is that Census data are based on people living in houses and are completed by individuals living on their own and the 'head of household'. This might make it difficult to interpret the views of the electorate as some household may be comprised of people ineligible to vote or with differing views.

8.103 The Secretary of State would in effect repeat what you have already done and probably come to the same conclusions. He can't hang his hat on any of these rotten pegs. Votes in elections, seats in Stormont opinion polls and demography are not the answer because no-one really knows how an

individual will vote until the moment of decision. See 8.83 above. Given the immediate history of Brexit and continuing trends in voting etc, the decision on constitutional change will be very fine and come down to how many nationalists and unionists vote against their respective traditions, how 'the others' vote when they can no longer sit on the fence, and how many of nearly 40% of the electorate who no longer bother with elections ('don't shows') turn up and how they vote. Nearly all nationalists and unionists will vote traditionally but it is very possible that the 'others' and the 'don't shows' swing it for the nationalists. Others and don't shows tend to be younger, educated, liberal and pro EU.

8.118 It's a mess that must be resolved since a succession of Secretaries of State could refuse to take any action. This would suit unionists and frustrate those seeking constitutional change. The pre poll poll could be adopted as a means of either stopping a border poll in its tracks or to trigger a border poll. The difference is that less rigorous criteria could be applied in initiating a pre poll poll and could even be scheduled for once every 7 years. If both governments backed this proposal, the Secretary of State would be free to do his/her job without constantly having to address the border poll issue.

9.15 Is it really compliant with GFA? The Secretary of State would act on the likelihood of a yes vote but then establish a process not unlike Brexit. If there are no details of what constitutional change involves the poll is biased towards the status quo.

9.36 The UK government has declared no inherent interest in holding NI in the UK against the will of the people of NI. However, many UK politicians might see discussions regarding the shape of a unified Ireland as an opportunity to remove an expensive, somewhat difficult and embarrassing appendage. Whilst unlikely to make firm commitments they might indicate their thinking on issues related to pensions etc. Unionists outside the parties may also seize the chance of shaping a new constitutional position if a yes vote looked remotely possible. Regardless it will be the responsibility of the Irish Government and others to ensure that the future interests of all the people of NI are considered equitably and fully.

9.39 This model should not be confused with the above suggestion regarding a poll about having a poll on constitutional change within NI. The difference would be in the wording of the former and its purpose as an aid to the Secretary of State in confirming the likelihood of a yes vote I the real thing.

9.53 It is possible that unionists will not engage at all with the process even if there is a clear majority for single jurisdiction. However, some individuals or groups will and the role of the Irish Government is critical. The UK Government again might make unofficial observations about how things might work out. The main issue here is informed choice of lack of it. The unionist parties will welcome a lack of clarity with respect to constitutional change and there will certainly be a bias towards the devil you know and also the fear factor. I agree with the authors – informed choice is critical – both these sub-models fail on that basis.

9.57 Boycott has been used by both sides in the past and might be used again despite a yes vote. Again the Irish Government must be prepared to do the thinking for those who do not engage.

9.69 The maximum model delivers clarity at the poll but it is not likely that an actual immutable document would be presented to the electorate in either jurisdiction but a framework or blueprint for constitutional reform. It might take the lawyers some years before drawing up a legal document approved by one or more house in an Irish parliament. Clarity is a trump criterion as it affects the turnout and outcome of the poll.

12.35 I think it highly desirable that franchise is based on the existing electoral roles in NI and RoI and that individuals can vote only in one jurisdiction. Voting rights should be extended to all normal residents including prisoners, and 16 years of age upwards. Whilst it is not essential that both jurisdictions have identical criteria both should be as inclusive as possible. It may not be possible to effect such changes before any referendum.

12.38 If the Secretary of State was biasing his/her judgment of the need for a referendum on electoral results based on the Assembly franchise it would be perverse not to use the same criteria for the referendum. It might be the case that the referendum vote is based on a new constitution which reforms the franchise criteria.

13.30 It would be good to follow the practice in the GFA – it worked. Given that the Irish Government takes a lead in outlining a new constitutional arrangement they would present a document to electorates north and south subject to simple yes/no ballots.

13.39 Language has become politicised in NI and since accepted practice is English only, a critical constitutional referendum is not a good point to introduce a second and third language option. It could be seen as introducing bias. If it has to come in there should be three discrete versions of the ballot form on a single side of the ballot sheet. There would have to be consideration of the order of the languages from top to bottom.

14.14 Lead campaigners should not be affiliated to parties – unionists and nationalists each comprise two main parties. The lead campaigners should come from a diversity of backgrounds. They should be free of contamination from, for example, political groupings associated with paramilitary organisations, or domination by a single party. If there is a referendum, boycott might be self-defeating. It should be clear to all that parties opting for boycott will simply be ignored and not relevant in the referendum. Intimidation and blackmail should have no role here.

14.17 Similarly, it should be evident from the outset that any illegal expenditure will initiate legal action against individuals and/or party officials.

14.18 There should be a cap on all donations. Experience with Brexit suggests that there was abuse of funding from non-Government sources which potentially emanated from overseas.

14.30 Without impediment should be a priority. Funding for each poll should be constrained by Government and to the electorate within each. All that would happen is an escalation in expenditure and a waste of money. If outsiders i.e. people not normally resident wish to donate towards the betterment of people in Ireland there are plenty of good causes. The referendum should not be a drain on either public or private resources.

14.41 The UK used to have an extensive public information system and NI still does with regards to road safety etc. Indeed there is joint NI/RoI public information on health issues.

14.45 All information issued should be clearly authored and indicate who has paid for it. It should be fact checked and results of fact checking should be published. Contraventions should require immediate withdrawal and if necessary shut down of web-sites, twitter accounts, blogs, publishers and broadcasts. Necessary legislation is required ahead of any referendum in RoI and UK/NI.

14.63 For information households in NI received a booklet explaining in detail what the GFA and the referendum in 1998 were about. It was not a legal document in the sense that it was written in legal language. It was understandable to anyone with a reading age of 8. However, there were ambiguities and some lack of clarity. Importantly the overall message was clear. A lot of the

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problems have a risen because the then main unionist and nationalist parties in NI were subsequently side-lined and by more extreme parties.

15.1 I very much agree that much preparatory work needs to be done and a plan established. I am not so sure a referendum is a long way off. A lot has happened even since November and recent experience with Brexit illustrates how a UK Prime Minister can metaphorically shoot himself in the foot. We don't want to be caught on the hop and find that a referendum is called as a result of a concerted campaign by a single party and there is nothing else other than partisan material on the table.

Again, congratulations on the draft report. I look forward to the finished version.

18th January 2021