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CONSTITUTIONAL STATUS OF NORTHERN IRELAND

SUBMISSION BY JARLATH KEARNEY (SEPTEMBER 2, 2020)

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*NOTE: This submission is written as a discussion paper, including commentary and recommendations, prepared by the author strictly on an individual and personal basis as an interested private citizen who is strongly committed to public service and to the constructive resolution of public policy issues. In keeping with the stated intention of the UCL Constitution Unit's consultation, this discussion paper does not posit any specific outcome for a possible constitutional plebiscite, focusing instead on preparatory public policy options and recommendations in the interim period preceding any potential process of referendum(s). While it is not being specifically published, it is being shared with interested parties on the condition that it must only be quoted with a proper reference to its 'discussion paper' status.*

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## SECTION 1 – COMMENTARY FOR DISCUSSION

*October 7, 2015 – ‘The weight of the words that dominated Brian Friel’s social insight was – and remains – monumental. The playwright’s voice spoke aloud sentiments that others could only ever feel innately or think abstractly... In ‘Translations’, Hugh says: “But remember that words are signals, counters. They are not immortal. And it can happen – to use an image you’ll understand – it can happen that a civilisation can be imprisoned in a linguistic contour which no longer matches the landscape of fact.” In contemporary Ireland and Britain, Hugh’s words aren’t merely relevant to the legacy of colonisation in spoken language – English dominating an Gaeilge. As our Irish-Anglo relationship (why is that phrase normally reversed?) has changed and developed in the interim 35 years, the meaning and metaphor of Hugh’s words also touch the very values which underlie our public and political discourse. The extent to which words have become “imprisoned in a linguistic contour which no longer matches the landscape of fact” is frequently evidenced by the disjoint between that political rhetoric and public reality. So often the political imperative is to frame and ‘spin’ the meaning of words around established realities with which they are totally in conflict... And it’s a far cry from the culture of collectives and communities out of which today’s Ireland (both Irish and Anglo) has grown. Perhaps the solution lies in more politicians becoming like playwrights, in their genuine depths of concern and conviction for the meaning and magic of words. Or perhaps we just need as many playwrights as politicians, shining subtlety and honesty onto that gaping chasm that so often exists between the ruse of rhetoric and “the landscape of fact”. As Brian Friel did.’ (The Irish News – ‘Friel translations should be applied to politics’)*

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1. This discussion paper encompasses commentary, recommendations, and contextual considerations published by the author in The Irish News over the past six years. **It posits a ‘two states, one system’ framework for Northern Ireland during the forthcoming decade into the 2030s:** one in which all-island cooperation on the island of Ireland should be systematically enhanced in practical and technical terms by the Ireland and UK governments (including the Northern Ireland Executive), whilst concurrently ensuring that harsh and potentially destructive divisions about future constitutional outcomes become lessened in their apparent immediate and destabilising urgency (whether or not the related instability is intentional).

2. **‘Two states, one system’ should be strategically anchored by a new bilateral intergovernmental Treaty between the Ireland and UK governments that acts inter alia as both as a discursive foundation and as a detailed framework for managing the future consideration of constitutional issues relating to Northern Ireland.** This Treaty should promote stability for managed, and manageable, strategic socio-political development, whilst ensuring that all viable future constitutional options can remain under ongoing discussion and consideration without dictating political life in the present moment.

3. When the Good Friday (Belfast) Agreement 1998 was established, it had been preceded by the construction and framing of key issues by both the Ireland and UK governments, and others, through intensive and systematic dialogue to shape perceptions and expectations over many years, and arguably even over decades from the early 1970s – including the mainstreaming of its foundational discourse, such as the Anglo-Irish Agreement 1985, the Downing Street Declaration 1993 and the Joint Framework Document 1995.

4. The 1998 Agreement's heart will always remain sacrosanct in historical spirit but, ever since its birth, the Agreement's head has constantly been evolved to meet the practicalities and realities of changing circumstances.

5. Since the Agreement's promulgation and affirmation in non-binary concurrent constitutional referendums, it has been followed by a range of wider bilateral and multi-lateral political and administrative agreements – without formal approval by plebiscites - that have amended and altered the terms of original understanding, including significant substantive amendments to the enabling quasi-constitutional statute of the Northern Ireland Act 1998.

6. There is therefore neither a lawful, practical nor moral basis for the simplistic argument that there must be a strictly literal, plain reading interpretation of one singular element of the Agreement in perpetuity, in this instance in relation to the provisions for constitutional change. Such an argument would be utterly inconsistent with coterminously arguing that the NI Act 1998 (labelled a “constitution for Northern Ireland” by Hoffman LJ in *Robinson v Secretary of State 2002*), and related instruments, should be read into practical application with a purposive interpretation by the Courts.

7. The Agreement (and its annexes) and the NI Act 1998, and related statute and regulations, effectively constitute a body of law. That over-riding logic and the collective interpretation of the constituent elements must be read purposively in the context of constantly shifting external circumstances, whether that is done at the level of a legal - or a political - judgement.

8. In addition, two of the primary and legitimate criticisms of the Agreement have been (i) its abject failure of construction through a gender lens, meaning that key gender dimensions of conflict and peace-building were structurally excluded from the text and framework; and (ii) its abject failure of construction regarding the understanding and closure of Northern Ireland's ‘conflict phase’.

9. Arguably both of these failings were as a direct consequence of mainly male and largely ‘war-time’ mentalities determining the content and intent of the Agreement. The continued failure over numerous negotiations during two decades to address either of these glaring inadequacies arguably speaks to the ageing limitations of the 1990s model of multi-party talks that continues to periodically resurrect supposed “crises” in Northern Ireland. A new model for interpretation is needed.

10. At very least it follows, therefore, that a purposive interpretation should now be politically read into the Agreement's language, commitment and intent around future constitutional change to the sovereign status of Northern Ireland, including the core principle of consent with regards to future act(s) of self-determination - in its deepest and broadest social sense, not merely in a simplistically technical or mathematical way.

11. Such a purposive political interpretation would require a contextual exploration and contemporary judgement by the Secretary of State for Northern Ireland about the centrality of the consent principle to future processes of self-determination within Northern Ireland at the time of deciding to proceed (or not) with introducing a timetabled programme for constitutional plebiscite (including the obvious necessity of a subsequent confirmatory referendum) for the technical transference of sovereignty at some future point over Northern Ireland from the UK to Ireland.

12. This contextual exploration and contemporary judgement should not merely be restricted to an historical understanding of consent in 1998 through a plain reading interpretation of the Agreement. Similarly, contemporaneous exploration and judgement would be required by the government of Ireland given the significantly different perspectives that obtain in that jurisdiction. A new ‘two states, one system’ Treaty could provide the framework.

13. Political consideration, policy development and socio-legal interpretation that reaches beyond public soundbites and single-issue campaign slogans is an evident prerequisite for any legally defensible decision-making process in public law by the Secretary of State. Context is therefore critical.

14. The Northern Ireland Act 1998, based on the 1998 Agreement, clearly sets the parameters. Schedule 1 states: “*The Secretary of State shall exercise the power (to order a poll) if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland.*” Part 1 states: “*But if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland, the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between Her Majesty’s Government in the United Kingdom and the Government of Ireland.*”

15. It is critical to highlight this legal, constitutional framing. Narrow political perspectives are not the only consideration, especially if one upholds the 1998 Agreement as sacrosanct. First, any Secretary of State is required by law to have a legally defensible basis for determining “*if it appears likely*” that any poll might succeed. This is not purely some political issue or judgement. Parliament intentionally did not define the tipping point. It seems unlikely that any Court would venture to amplify this wording. Second, to be legally defensible, any decision to trigger a poll would have to conform with general public law requirements to be reasonable, rational, lawful, transparent, fair and procedural. In terms of a sensitive constitutional debate, this would require a full policy engagement cycle prior to the laying of a related Order before parliament. Third, ‘*ceasing to be part of the UK*’ and ‘*forming part of a (small ‘u’) united Ireland*’ are two related but distinct elements of decision-making: the latter concept is intentionally not defined in law in terms of sovereignty. Fourth, any proposed detailed changes to Northern Ireland’s constitutional position will also require passages through parliament (separately, in London and Dublin), including positive votes in both legislatures.

16. The passage of any related laws for joint approval respectively through Westminster and the Dáil would be determined by many factors, including at least one general election cycle which could change the configuration in parliament. After legislative passage and a confirmatory referendum of those terms, there would then be required a managed implementation phase. Radical constitutional change can rarely be implemented instantaneously. Remember, Hong Kong took 13 years from the 1984 agreement up until 1997 before it returned to qualified Chinese control. Yet 20 years on, instability and insecurity are being intensified. So, realistically – even in a rapidly evolving scenario – it would be the late-2030s or early-2040s before any significant constitutional change could conceivably practically happen.

17. In the foregoing context; in asserting that the fabric of the 1998 Agreement remains absolutely intact; in the unstable circumstances of Brexit and wider geo-politics; and in the situation of sensitive state centenaries in both jurisdiction, the Ireland and UK governments should therefore develop a new bilateral Treaty.

18. The process to develop that Treaty should no longer indulge the outdated 1990s model of multi-party talks, but rather adopt a model that instead asserts the primacy of the Agreement’s various democratic institutions as the primary appropriate vehicles for contributing to discussions that would involve joint administration – not necessarily joint authority - by both sovereign governments about possible processes around the future sovereignty of Northern Ireland.

19. Under the new Treaty, both governments should jointly tie progress on any official processes about possible future constitutional reform to the requirement that the long-term maintenance and stability of those institutions is sustained under the principle of consent.

20. The following 12 recommendations, and related contextual considerations published over the past six years, seek to provide a more structured basis for considering a new Ireland – UK Treaty in terms of the future constitutional position of Northern Ireland, but in a way that places the constitutional lens – and self-determination conceptually - on a broader discursive and socio-legal landscape than simply the narrow, technical definition of sovereignty *per se*.

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## SECTION 2 – RECOMMENDATIONS FOR DISCUSSION

Based on the foregoing discussion, commentary and context, these 12 inter-related recommendations suggest one possible bridge or runway towards managing Northern Ireland's constitutional considerations over the coming decade. At their core is the following:

- A new bilateral Ireland – UK Treaty between both governments
  - A 'two states, one system' paradigm providing stability into the 2030s
  - A requirement that constitutional processes will depend on institutional stability
  - A long-term framework for transcending changes in governments and geo-politics
  - A range of practical steps to deepen and widen the complexity, understanding, narratives and ownership of debates about Northern Ireland's constitutional position
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**RECOMMENDATION 1:** Future constitutional discussion about Northern Ireland should be prefixed by a new international '*two states, one system*' Treaty between the Ireland and UK governments, taking into account the short-to-medium realities of Brexit and with consultative input from Northern Ireland's parties through the formal channels of existing elected democratic institutions:

- that frames the design, sequencing and implementation of future relationships with maximum flexibility and agility, with inclusive and structured social participation, and with a coherent and strong gender lens;
- that manages processes for democratic decision-making against the continuously changing nature of socio-political circumstances, both locally and globally; and,
- that determines timelines for action, in real time, by reference to a flexible consideration of a range of transparent and relevant factors rather than being driven by imposed or predetermined deadlines of undue pressure.

*September 10, 2014 – 'Remember, it was 16 years after the 1921 Anglo-Irish treaty that the old Articles 2 and 3 were introduced under the 1937 Irish Constitution. These became a "constitutional imperative" in Irish law, and served as a strong political (if not practical) counterpoint for northern nationalists captured by partition. Despite the referendum in May 1998, both articles were only amended on a post-dated basis when the power-sharing executive and north-south ministerial council were finally formed in December 1999. There's a precedent – and a lesson – in all that. We need to transform the past's 'strategy of process' conceived in conflict 20 years ago, for a new 'process of strategy' shaping Ireland's detailed future 20 years from now.'* (The Irish News – 'Cautions for anyone who seeks short-term power')

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**RECOMMENDATION 2:** The new '*two states, one system*' Ireland – UK Treaty should jointly determine the arrangements and terms for an official programme of broad, informed, inclusive and complex engagement across all communities about Ireland's historical context and development as an island in order to consider and educate an historical context, after which new constitutional discussions could also be logically introduced to this same public process as appropriate.

*April 8, 2015 – 'The site's usage predates the Norman invasion of Ireland... Beside Cranfield church is a holy well, with traditions that hold no credence in Canon law or Vatican doctrine. The link between the church and the holy well traditionally saw locals combining Stations of the Cross with circuits of the well. Local people believe the well has healing powers. They tie rags to the trees beside which it lies. As a rag rots, so a person's worry or ailment is supposed to disappear. Dozens of rags, shows, ties, memory cards, are attached to the trees: mine too. All equal. Cranfield is a site of profound*

*beauty; its lengthy lifetime vastly out-stretches the week-long Easter rebellion of 99 years ago, upon which Irish society will focus for the next 12 months. It's a reminder that our approach to Ireland's recent history – from 1916 to 2016 – needs each of us to consider a more complex and broader historical perspective; one which may even challenge the narrow comforts of our varying present-day discourses.'* (The Irish News – 'Best monument to the Rising is not to relive it')

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**RECOMMENDATION 3:** The new 'two states, one system' Ireland – UK Treaty should jointly commission a credible and specific academic-led examination and officially published report in both jurisdictions of:

- the extent to which the originating basis for partition and the consequential sectarian structure of both states on the island of Ireland - prior to the transformative narrative of the Good Friday (Belfast) Agreement 1998 – proved ultimately iniquitous to citizens on all sides; and,
- the extent to which constantly improved/reformed political and practical arrangements of good government could become beneficial for citizens across the island of Ireland in the 21st Century, against a landscape of ever-increasing global interdependence.

*January 27, 2016 – 'As of five years ago, the 2011 census found that 89 per cent of the north's population – about 1.6 million – was born here. (One-in-ten was born in the south, Britain, Europe and farther afield.) ...The most significant group is the under-35s. This is where the greatest population growth is happening. It's also where substantial social, economic and political power will rest in 20 years. In this age group, just 35 per cent identify as 'British only', with 28 per cent 'Irish' and 21 per cent 'Northern Irish'. So, collectively 49 per cent of young people now identify themselves as citizens of this island – far outweighing 'British only' citizens. If you compare directly between the 'traditional' religious backgrounds, Catholics make up 48.4 per cent versus Protestants at 51.6 per cent. The world is turning. Society is transforming. As we approach 100 years since the Northern Ireland state was formed, the demographic, cultural and social trends are profound and unstoppable. The question is how those complex and multi-layered trends will be addressed through long-term political strategy and policy planning. What's certain is that the assumptions and conditions promoting the iniquity of partition now rest on quicksand. That doesn't inevitably mean a traditional united Ireland 32-county framework will follow. Rather, a discussion must now open about the meaning of self-determination over the next 20 years – conditioned by our actions today.'* (The Irish News – Allegiances, attitudes and how they change')

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**RECOMMENDATION 4:** The new 'two states, one system' Ireland – UK Treaty should jointly commission a credible and rapid academic-led examination and officially published report in both jurisdictions of:

- the most effective practical elements of more recent public reform processes that have created substantial social, political and structural transformation within Northern Ireland (such as the Patten Commission and the Criminal Justice Review, both emanating from the Good Friday (Belfast) Agreement 1998); and,
- the related best practice elements that could be practically identified and implemented to inform the future sequential process of, respectively, a structure for historical/contextual and constitutional discussions, and possible initial and confirmatory referendums.

June 1, 2016 – ‘Very often in life, the biggest problem with communicating a message isn’t what you say, but what the other person hears. They’ll filter the message through their own experience, biases, knowledge, agendas and ideas. We all do it. So if a compelling message isn’t getting through, perhaps sometimes the problem lies in the packaging. As in life, so too in politics. For example, if I talk about my experience working with the senior civil service, some may think I’m having a personal ‘go’ at others. In which case, the message of transformation gets tainted. If I analyse the historic political context of the civil service, some may dismiss the resulting recommendations as partial. If I interrogate representative inequalities in elite public institutions, some may criticise the conclusions as merely academic. It may be, of course, that such experiential, political, or academic conclusions are entirely valid in proving the need for change. Case studies, political characteristics and representative equality are all central to the legitimacy of public institutions. That was the central spine of the Patten Report on policing reform.’ (The Irish News – ‘Transformation agenda needed in our politics’)

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**RECOMMENDATION 5:** The new ‘two states, one system’ Ireland – UK Treaty should copperfasten the institutional logic of the Good Friday (Belfast) Agreement 1998, by:

- framing a narrative of a ‘two states, one system’ paradigm that explicitly acknowledges existing constitutional realities whilst creating space for enhanced mutual practicalities on the island;
- providing long-term discursive stability within which sequential historical - and then constitutional - discussions can safely subsist;
- assuring a logical and long-standing contemporary framework which can withstand the buffeting of Northern Ireland’s ongoing internal political instability either by opposing local actors, or domestically within the UK and Ireland (or potentially by hostile international actors).

June 29, 2016 – ‘So the United Kingdom constitutional model is dead. Scotland is sprinting towards ‘Scexit’. Westminster is in turmoil. Sterling is floundering... And last week’s Brexit vote now copperfastens indefinite instability. It’s notable that younger voters overwhelmingly backed ‘remain’. But, just as significantly, the majority backing Brexit was cross-sectional, cross-party and cross-class (including within the north’s 44 per cent ‘leave’ vote)... In any event, the ‘leave’ result has now signposted an inevitable refinement of future Irish-Anglo relationships. Brexit’s fallout means the executive and assembly parties, and both governments, must once again grapple with the ‘totality of relationships’ among the peoples of these islands. Any refinements – based on mutual benefit – will surely require enhanced and intensified all-island planning and cooperation. Practicalities will shape politics. Ironically, it is English voters who have triggered the law of unintended consequences. History is a helpful guide to what could follow. Remember, Cyprus gained a form of independence from Britain in 1960. Yet just two years earlier Westminster had received ministerial assurances it would “never” happen. Later, in 1984, it wasn’t Labour that negotiated the Sino-British Joint Declaration at the height of the Cold War, transferring Hong Kong to ‘communist’ China. It was Margaret Thatcher’s government. In both processes, the ‘independence’ was neither absolute nor immediate. It was managed and bespoke. But the Hong Kong experience - eventually implemented in 1997 – offers a particularly interesting comparator for future Irish-Anglo relationships. Hong Kong has long been characterised as ‘one country, two systems’. Perhaps Brexit will now push Ireland towards ‘two states’, one system’. Manageable and achievable policy options – which serve the interests and mutual benefits of all citizens, north and south – must now effectively influence Britain’s exit negotiations from Europe in coming years. The executive parties and their Dublin counterparts are well placed to develop

options, assuming they avoid the 'Project Fear' approach which marked the Brexit debate. With the Good Friday Agreement as the background template, the uncertainties and complexities of Brexit can become a platform on which ambitious goals develop. And no-one needs to be unnerved. It may yet be possible to establish a single free-flowing, borderless, cooperative, socio-economic unit within Europe upon this island... Fifteen years from now, the world's economy will have shifted below the 32nd parallel. Countries like India, Pakistan and China will dominate with their populations and power. But Ireland's economic, political and cultural linkages with the US and Europe will still remain vital. By then, our island's relationships (north and south) with a fractured Britain must be standing firmly on brave new ground.' (The Irish News – 'Time to take stock after shock of Brexit victory')

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**RECOMMENDATION 6:** The new 'two states, one system' Ireland – UK Treaty should jointly commission and administer the development and official publication of an original, rigorous, comprehensive programme of longitudinal data and research by state statistical agencies:

- exploring the realities of attitudinal perspectives in Northern Ireland society with specific regard to current and future constitutional arrangements (since the Northern Ireland Assembly and Executive is not yet politically collegial enough to decide and manage such a process); and,
- in a way that can credibly and objectively inform wider public discussions, potentially becoming a part-basis for any legally-defensible governmental decisions in both jurisdictions regarding ministerial action - or judicious inaction - on decisions about the various initial and subsequent confirmatory plebiscites that may relate to future constitutional reform across Ireland.

*July 27, 2016 – 'Discussions on a border poll in the north, and a second independence vote in Scotland, will continue to drive the debate. They'll also give Dublin and Edinburgh more negotiating leverage in Brussels and London. However, even if both polls were ordered today, neither could happen tomorrow. The forward management of both agendas therefore needs to avoid reckless instability, especially with further sensitive centenaries across this island in the next five/six years. In particular, our border poll debate should not become a negative 'demand and deny' stand-off, marked by political head-butting. Creative policy options need to be developed.... Just consider the next census scheduled for all jurisdictions in Britain and Ireland in 2021. The content and conduct of the census is respectively devolved to the Scottish government and the north's executive. This creates regional power.... Ministers in Dublin, Belfast and Edinburgh could utilise their existing policy power by urgently commissioning agreed joint data which carries official governmental status, either under the 2021 census or a new bespoke project. This could be collectively developed and published for maximum momentum across the three jurisdictions. It could both inform and shape debates about Brexit, by building arguments and agendas. None of this would impinge the Good Friday Agreement, and its north/south and east/west arrangements. Nor would it require formal agreement between jurisdictions... Joint research could frame informed positions and even influence outcomes. It could also create a practical policy linkage between Dublin, Belfast and Edinburgh. Imagine the inter-related impacts. Government statistics will never have the constitutional big-bang of a Scottish independence vote or an Irish border poll. But they're fundamental for framing social planning, identifying and targeting inequalities, and informing sensible political debate. When used strategically, they can create a continuous, rolling public impact which agenda-sets society's future.' (The Irish News – 'Forget the border poll, look forward to the census')*



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**RECOMMENDATION 7:** The new ‘two states, one system’ Ireland – UK Treaty should, with consultative involvement on devolved matters from the Northern Ireland Assembly and Executive:

- seek to strategically shape and share the discursive landscape of political and constitutional issues affecting the island of Ireland in the 21st Century; and,
- dovetail joint, practical actions (such as official longitudinal research) within a global narrative that frames Northern Ireland’s relevance in its appropriate relative context, challenging all citizens to consider their existing perspectives.

*October 19, 2016 – ‘As the impact of Brexit unfolds and the next phase in Ireland’s historical growth develops, we should start opening up ideas and discussions about our individual and collective sense of Irishism. At a macro political level, there will probably be a new Irish-Anglo agreement... Joint administration, not joint authority, will pave the path. This may result in one major agreement, or several consequential interlocking agreements. Steady work is ongoing between Irish and British officials with their European counterparts. Political discourse in the north needs to be increasingly thoughtful and measured. Broad agreement will likely see greater all-Ireland information and security cooperation with Britain, alongside enhanced all-island economic cooperation between north and south (potentially such as Euro currency arrangements). The territorial jurisdictions of Northern Ireland and the Republic of Ireland will remain unchanged in the immediate term but with a routinely invisible border. In the longer term, all-island cooperation and development will progressively increase. For that reason it’s vital to consolidate and maintain political stability in the north – notwithstanding constitutional crisis in Britain... So there is now significant potential in a conversation around our Irishism – not just about ‘what’ our society’s post-Brexit systems should look like, but about ‘whom’ we each are as citizens in shaping a changing society across this island. In turn, that may stimulate a valuable discussion about the inherent values and daily ethos of those who are British on this island, and – in that space – we may actually find a greater complexity of common ground and common good than we imagine. A discussion about our Irishism in this generation needs to transcend the narrowness inherent in the politics of party or place. It needs to drill much deeper to the very heart of our beliefs and interactions as island citizens living on the far edge of Europe in a challenging and interdependent world. Our Irishism should not simply be defined by overt culture, or even constitution.’  
(The Irish News – ‘Irishism transcends party lines, borders’)*

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**RECOMMENDATION 8:** The new ‘two states, one system’ Ireland – UK Treaty should place a careful and significant focus on:

- exploring both the practical benefits and the practical challenges of any proposals to move peremptorily beyond the constitutional structure of a ‘two states, one system’ paradigm; and,
- systematically involving professional and serving Subject Matter Experts from public administration across both jurisdictions on the island of Ireland to explore the complexity of possible solutions alongside illuminating likely complications (about which some more simplistic perspectives may not be fully aware).

*August 9, 2017 – ‘From references about ‘special circumstances’ by EU and UK leaders, to discussion of ‘special status’ between local political leaders, the unique position of Northern Ireland as a jurisdiction is universally acknowledged. In the short-to-medium terms, the key challenge for Ireland’s polity in the context of Brexit is to develop the practicalities of a ‘two states, one system’ framework across the island within maximum EU arrangements. Such a system would respect the existing constitutional and political realities*

*of the Good Friday Agreement, while responding to the changing realities of Brexit in economic, social, cultural and legal terms. Even if there was a landslide pro-Irish unity referendum vote tomorrow, it would still take almost a generation to engineer implementation. 'Two states, one system' therefore provides a signpost for Ireland's Brexit journey in the short-to-medium term – notwithstanding the wider, long-term debate about Irish unity, which, without doubt, will include federalist options. A 'two states, one system' policy framework would provide stability over the coming decade while responding flexibly to changing needs across this island. In addition, Brexit is not our only big challenge. Domestic demographics, international economics and global security are also posing diverse strategic challenges.' (The Irish News – 'Dublin's Brexit stance no back of an envelope job')*

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**RECOMMENDATION 9:** The new 'two states, one system' Ireland – UK Treaty should acknowledge and affirm:

- the core democratic realities of Ireland's specific circumstances at the relevant times as the guiding parameters, ie. in 2020 that means operating within the outcomes from the self-determination plebiscites of the Good Friday (Belfast) Agreement 1998 and of the Brexit referendum in 2016;
- that the results of all potential future plebiscites on constitutional change must, at any future time, be equally capable of amending or reversing preceding decisions on constitutional change on the island of Ireland; and,
- that no sovereign outcome should ever be fixed permanently or incapable of change/reversal given that the principle of consent within Northern Ireland is the principal arbiter of the constitutional position of that jurisdiction (a fact to which all major political parties have already formally agreed for a generation).

*September 20, 2017 – 'The big risk locally arises if politics fails to fully consider the wider global context, such as generational challenges like Brexit or demographics, or the unstoppable impact of fast-paced economic, social, security and technological developments. That's why – alongside fixing institutional problems in our politics – it's also imperative to urgently get a properly functioning assembly, executive and NSMC... Arguably the local institutions have not been used fully or effectively thus far. But 10 or 20 years is simply a blink in history's eye. The principle still stands. And the practices can be improved.... Democracy in its electoral form has produced three major realities here at present. One, based on the 1998 all-island dual referendums, the people of Ireland voted for democratic political institutions, all-island development, public reforms, constitutional amendments, the consent principle, and an equality and rights-based framework for peaceful evolution. Two, based on the 2016 Brexit referendum, a measurable majority of citizens want this society's future to remain inside current arrangements across the island of Ireland within a seamless EU framework. Three, based on recent party votes, a majority of citizens do not – at this point, today – support parties who want to change the constitutional position of the state of Northern Ireland away from the United Kingdom to Ireland. That means we're all facing a challenge. Electoral democracy says that we should maximise a future one-system, all-island approach within the EU, alongside observing the current realpolitik of two states on Ireland (notwithstanding future constitutional change, such as unification and federalist debates). Anyone who wants – in the short-to-medium term to square those circles into an effective 'two states, one system' all-island framework has an important practical question to answer. How can that outcome be achieved unless we have an effective and functioning northern assembly, executive, NSMC and British Irish Council?' (The Irish News – 'Brexit challenge still unrecognised')*

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**RECOMMENDATION 10:** The new ‘two states, one system’ Ireland – UK Treaty should jointly create and lead a transparent, official mechanism for encouraging and establishing open multi-lateral avenues of clarification and understanding between those actors across society with any interest in discussions about possible constitutional reform, on the explicit condition that the UK’s existing non-diminition principle will be continue to be applied to the equality and human rights elements of the 1998 Agreement irrespective of the rolling outcomes of Brexit.

*October 31, 2018 – ‘Now rewind to the early 1990s. The main histories of the early peace process note that a senior British government representative cited Europe as a consideration during secret discussions with republicans. The diplomat-cum-spy apparently talked along these lines: “The final solution (for Ireland) is union. It is going to happen anyway. The historical train – Europe – determines that. We are committed to Europe... the island will be as one.” As with all finessed diplomats, the trick lies in the interpretation. Sometimes the reader sees only what they want, rather than what is said (and unsaid). “Union” means many things to many people: economic, constitutional, political, cultural, security. Likewise, the “island will be as one” need not mean any change in the constitutional or sovereignty realities. This anecdote is useful because one issue with much Brexit commentary has been the narrow fixation on tactical waves, rather than strategic tides. Partisan focus on fine detail has sometimes failed to notice important nuances and tones. The fact remains that Europe’s “historical train” has never travelled in a straight line. Great European battles of war for power have raged repeatedly from the time of Rome two millenia ago, to the horrors of the 20th Century – two world wars, the Cold War, the Balkans atrocities... Important work will be required to restore diplomatic channels between these islands. Until then, it’s also important that both jurisdictions take no steps backwards – economically, politically, socially or culturally. Brexit has no conclusion. A process of ongoing (open-ended?) change is now rolling; another page being turned in Europe’s long and complicated history, less dramatic and final than many initially imagined.’ (The Irish News – ‘Important nuances and tones in Brexit talks’)*

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**RECOMMENDATION 11:** The new ‘two states, one system’ Ireland – UK Treaty should jointly:

- predicate the foreseeable local and challenges facing the peoples of Ireland – in both jurisdictions – over the coming decade in simple and stark terms, from environmental, economic and social trends such decreased monetary growth and changing employment/economic patterns, through to the increased geo-political appetite of foreign state actors to begin exploiting any visible fragility or instability in Northern Ireland’s socio-political status to disrupt both Ireland, the UK and the EU; and,
- establish long-term ‘one system’ working groups – involving expert actors from across society - to transparently construct monitoring commissions for the island that can develop shared discourse and reportage across economic, social, environmental, international, and security and intelligence arenas.

*May 29, 2019 – ‘Politics moves in cycles. As far back as 2013, an unstrategic and negative atmosphere was already beginning to invade the assembly and executive. That was long before controversies about the non-development of Maze-Long Kesh, before RHI, before high-profile criminal murders on Belfast streets, before Brexit, before new issues became ‘red lines’. It was a negative atmosphere that predictably contributed to the context where local politics got set back for years. We’re now inevitably emerging from that long cycle of negativity: there is no other option. The political institutions are, at least today, steadily gaining momentum towards their full restoration on a better and*

sustainable footing, probably within the next nine to 12 months. (Watch closely as the winds start to shift, and some – who proclaimed the assembly’s permanent demise – begin to spin softer outcomes.) In 2020, there will be real challenges – genuine social ‘crises’ – awaiting any newly elected, incoming assembly and executive. These can only be addressed through a process of collective responsibility in politics: for example, Brexit’s endless instability; climate change disaster; public finances; long-delayed socio-economic development; delivering local stability during global turmoil. But the overarching, fundamental issue – the one that will determine our collective ability to do everything else in this society – is the priority of building genuine relationships based on dignity across these islands. People suffer when politics becomes a dogfight rather than a dialogue. It’s time we all listened better and learned more from each other.’ (The Irish News – ‘Pause for thought – the sensible way to proceed’)

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**RECOMMENDATION 12:** The new ‘two states, one system’ Ireland – UK Treaty should include:

- a joint programme of practical steps to cement the long-term requirement for viability of the Northern Ireland Assembly and Executive, the North South Ministerial Council and the British Irish Council (for instance, in terms of enhanced policy-skills building or partnered resourcing);
- the condition that any formal, governmental-led processes around possible constitutional reform will require the sustainability of all the Agreement’s institutions: the 1998 Agreement constituting, as it does, one interdependent body of law to be purposively interpreted; and its institutions providing, as they do, democratic protections for all sides.

*November 27, 2019 – ‘It’s worth recalling that back in mid-2007, Martin McGuinness and Ian Paisley were working towards a draft programme for government. There was a blockage around equality language. I was policy adviser at that stage. A sift of many previous speeches from both leaders identified positive remarks on the need for equality and social reform. Some common ground flowed from finding some common language. The first and deputy first minister then agreed an equality dimension in the final programme including an equality impact assessment – even though the overall budgetary envelope was determined by Westminster. Baby steps on a long journey. This place is so small that we’ll always operate under such external factors – pressures, budgets, regulations, interests – east/west or north/south. And influence is always better than absence. In December 1999 the North South Ministerial Council and British Irish Council met for the first time – exactly 20 years ago. Lessons from the interim must surely be learned. But by 2030 (whatever else is going on) we all deserve to be looking back on a full decade of mundane effectiveness from functioning political institutions under the Good Friday Agreement.’ (The Irish News – ‘Next decade should be about functioning political institutions’)*

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