

**UCL Commission on Irish referendum
Evidence by Prof JD Gallagher CB FRSE**

In this evidence I wish to make three points:

- Referendums are a good way of confirming a decision the population has already made, but not of making narrowly contested existential choices;
- those offering a referendum have to be able to deliver the outcomes offered;
- voters need to know what the outcomes of the vote would actually be.

These lessons, which can be readily drawn from the Scottish independence and EU referendums, should inform thinking on this issue.

Referendums are a good way of confirming a decision the population has already made...

... but a very damaging way of making an emotionally resonant, existential choice on which the population is evenly divided. This is evident from both the Scottish independence referendum and the Brexit referendum. In the former case independence was already a big issue in Scottish political debate, but several years of campaigning turned it into the only issue, and hardened opinion on either side. Independence campaigning started in earnest in 2011, did not stop after 2014 (after a better-than-expected result for campaigners) and continues today. In the latter case, Leave and Remain became as a result of the campaign and its aftermath the primary political identities in Britain. In both cases, holding a referendum created or exacerbated social divisions.

In Northern Ireland, of course, division is already well entrenched; but it would be foolish to assume that referendum campaigning over reunification could not deepen and exacerbate it to a substantial degree.

This goes to whether a referendum should be held at all, but it also goes to the question of losers' consent if one is held. Such consent has not been evident in either the Scottish or European cases. In the Scottish case, the UK government, expecting to win the referendum, handed over most of the key decisions about running it to the SNP government in Edinburgh, essentially so that they would not be able to cry foul about the result. They have not, but independence supporters have nevertheless not accepted the result but campaigned for a repetition ever since. In the Brexit referendum, the campaign for another "People's vote" showed the absence of losers' consent also.

In Northern Ireland, the need for losers' consent is all the greater, for obvious reasons. But no consideration appears to have been given to how to secure it. At a minimal level, it requires complete trust in the electoral process – from end to end, including campaigning as well as the mechanics of vote counting. It would also require good answers to the two questions posed below. But at a more profound level, it requires cross-community assent to the holding of a referendum in the first place. That would require a great deal of preparatory work, both with the domestic parties but also, directly, with substantial numbers of citizens. The process of getting to referendum, if one is ever to be held, is at least as important as the referendum itself.

Those offering a referendum have to be able to deliver the outcomes offered

Some referendums are straightforward: if the voters vote for X, they will get it, eg an alternative vote system for UK general elections, or Scottish or Welsh devolution. The government which offered the vote could deliver the promised outcome. Others are less clear: the prospectus for Scottish independence was one which the SNP could not of themselves deliver; even more so the prospectus for leaving the European Union, which has not been delivered. This is in part about the clarity of what is offered, but more about the need for cooperation from others.

In the Northern Irish case, the key to Irish re-unification is the Republic's cooperation. That requires a referendum under the Republic's constitution, an obligation of the Good Friday Agreement which states that reunification would take place "*on the basis of consent, freely and concurrently given, North and South*". This might be thought to demand simultaneous referendums in both parts of the Island, but a problem of sequencing arises. An obviously bad outcome would be if Northern Ireland voted for re-unification but the South rejected it: where would that leave both parts of the island, most particularly the North, which would have rejected its present status but be unable to move to the new status it had voted for? (The opposite outcome is less problematic.) That suggests that any vote in the South should come before and be contingent on the result of one in the North: provided these were not widely separated in time, that should meet the test of consent being "concurrent".

Voters need good information on what the outcomes actually would be

Linked to this is the question which bedevilled the European referendum especially: what would voting for the proposition actually mean? The absence of specification allowed for the distribution of fantasies. It was an issue in the Scottish referendum also, in that the Scottish government's proposals, e.g. on currency, were promises that could not be delivered. That is not to say that campaigns can only be prosaic, and some exaggeration of benefits and risks is probably inevitable. But in the case of a border poll, when two nation states will have to implement the outcome, it should be possible to have some more clarity over, for example, any (likely) continuing UK interest in Northern Ireland and its Unionist community in the event of unification, what institutional forms that might take, how issues like currency, fiscal position and economic union would be managed, and so on. To the extent that the Good Friday Agreement addresses this issue, it implicitly assumes that self-determination into a United Ireland is simple, comes in only one flavour (as it were) which would be negotiated after a vote by the two governments and then just implemented.

It would however be profoundly irresponsible of the governments to sanction a referendum (North or South) in the absence of full detailed work on questions of this kind. Otherwise unification could be presented as meaning anything (desirable or undesirable) during the campaign, and anything negotiated by the governments after a vote could be presented as what the people voted for. Indeed it might be that doing that work could form part of the process of building a consensus for a referendum, and possible losers' consent in one.

One option discussed in this context as it has been elsewhere is a referendum on the principle of reunification followed by one on the deal negotiated. This has however the risk that after

a vote for the principle, campaigners would keep demanding a different deal to put the 'will of the people' into effect. The better approach would be for the Secretary of State to consider whether there was an emerging consensus towards having a poll, perhaps using an informal and non-binding referendum on that question or, perhaps better, Citizen's juries or Assemblies and other forms of public involvement, if so then to work with the government of the Republic to agree in broad terms the shape of reunification and then hold a pair of sequential referendums, South and North, to see if this concrete proposition gained assent. (It might also be that if the UK wished to implement changes in the governance of NI within the UK, these too should be discussed, developed and put before the voters at the same time.)

Conclusion

It is easy to see from the Scottish and notably the European referendums the risks and difficulties which the simplistic tool of the referendum brings with it: it does not necessarily settle the question, because a binary choice creates winners and losers and is not well designed to secure the consent of those losers. If one has to happen (rather than, say, different processes of consensus building on alternative constitutional developments) then the only responsible way to go about it is, first, to build consent in NI on the legitimacy of a vote, then for both governments to develop in as much detail as is possible the substance of the choice that would be put in front of voters, and then to hold two close together but sequenced votes South and North.

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