

Evidence to The Working Group on Unification Referendums on the Island of Ireland

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Qualifications: I am a postdoctoral fellow in Public Law at Worcester College, Oxford. I am also a British Academy Postdoctoral Fellow. My D.Phil. on referendums was awarded by the University of Oxford in 2018.

Overview: I was very impressed by the report. I attended the launch of the Interim Report on 3 December and found the panel discussion valuable. Here, I will comment on sections of the Interim Report, drawing on the panel discussion comments.

Comments

Paragraph 34: I was not sure about the phrasing in this paragraph, which references possible referendum configurations, that 'none of the options is clearly better than all others.' I think a better wording would be something like: 'some of the advantages and disadvantages of these different configurations are incommensurable.' I agree that the context of the Good Friday agreement means that one cannot straightforwardly apply the conclusions of the previous Independent Commission on Referendums, which advocated post-legislative referendums wherever possible and an additional ratification referendum where that is not possible. However, I agreed with the hesitation expressed by Clare Salters at the panel launch about ruling out configuration three. I agree with the statement, also in paragraph 34, that 'the preliminary referendum that it envisages in Northern Ireland could too easily be interpreted as violating the spirit of the 1998 Agreement, or misinterpreted as a vote on the substantive issue of unification.' I would only add that the worry runs both ways. If processes do not work out as voters expect or intend, other threats to the Belfast Agreement arise.

To be clear, I am not saying that the Commission should necessarily recommend configuration three. Instead, I suggest rephrasing this section to clarify that ruling out configuration three is not, as Salters said, risk-free. I think the Commission is right to say that the Belfast Agreement does not point in the direction of configuration three. Still, I was not confident it precluded it.

5.3 Simplicity: I am not sure that 'simplicity' was the right measure for evaluating referendum configurations. The multi-stage referendum process being used in Chile is not 'simple,' but it is *clear*. It has high levels of public support and engagement. The original referendum process and negotiation on the Belfast Agreement was not simple. It included many different kinds of consultation, but it had high public engagement levels and procedural legitimacy. I think a criterion of clarity, rather than simplicity, connects better with the other criteria. One would not want simplicity, for example, to preclude many types of consultation and engagement in support of inclusivity. Clarity better supports the other criteria for referendum configurations than simplicity does. This process will inevitably be complicated, and that is no bad thing.

10.48 – 10.65: These sections on 'no vote' outcomes were thoughtful and nuanced. I would have liked to read more, however, about automatic processes that should be triggered by the United Kingdom to reconsider forms of the Union in the 'no vote' outcomes in configurations two, four, and five. Given that a high threshold for (potential) support for change, has been met to call a referendum in the first place, there is a need for automatic consideration of significant reform.

Conclusion: Many thanks to the Commission for this terrific report on an issue of enormous public importance. I appreciate the opportunity to provide feedback.