

**SUBMISSION ON THE INTERIM REPORT TO  
THE INDEPENDENT COMMISSION ON REFERENDUMS  
from  
THE DE BORDA INSTITUTE**

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In my first submission, I wrote:

- I “...in holding any future referendum in Ireland and/or Northern Ireland, the methodology could be TRS or AV, and be in complete compliance with the Belfast Agreement.” (7).
- II “Others may wish to regard such an MBC as a non-binding procedure, the outcome of which could then be subject to a binding majority vote ratification.” (8.1).

**A OBJECTIVE BACKGROUND**

1 You ignore the science. The authors of the Belfast Agreement (and those of the Dayton Accords) also ignored the science. But they are politicians, most politicians like to control things, and many of them find majority voting is very suitable for just that. But why do you, political *scientists*, why do you ignore the science?

As the late Professor Sir Michael Dummett<sup>1</sup> wrote, “...the theory of voting... appears to be wholly unknown to anyone concerned with its practical applications. It is certainly quite unknown to the politicians... and largely unknown to experts in political institutions...”<sup>2</sup>

You asked me for a submission. I complied. You then ignored it, totally. In the ‘de Borda’ annual report, your response is described as “rude” – not an adjective usually applied to academic texts.

2 What’s more, you contradict yourself. On page vii, para 5, you write, “Progress is best made... when those belonging to both traditions and to none are included... But the basic question of sovereignty is decided by simple majority.” So the people’s new car can be any colour they choose, as long as it’s black or white?

3 There is nothing in the Belfast Agreement which says that the final decision cannot be taken in a multi-option process, as long as that decision has the support of a “simple majority”. As I pointed out in my first submission – and hence the two quotes at the top of this paper – a “simple majority” does not mean the *entire* process has to be *only* binary. A simple majority can and often has been achieved in a multi-option process. Maybe the obvious example to cite is that of Newfoundland in 1948, which was given a three-option referendum in a two-round system... by Westminster! So the precedent has already been set. The three options got 14, 41 and 45% in the first round, and in the second round, the winner had a “simple majority” of 52%. Simple.

4 Are you afraid to criticise the Belfast Agreement?

(a) 50% + 1. So in theory, if someone reckons the outcome is going to go one way by just one vote, they could murder two people from the opposite community, and the outcome would be 50% - 1. And it’s called a Peace Agreement?

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<sup>1</sup> One of the original patrons of the de Borda Institute who, on my invitation, spoke at the 1995 ‘*Where Lies the Compromise?*’ conference in Belfast. I last saw him at his home in Oxford, just before he died: like a father to his only child, he gave my work his blessing.

<sup>2</sup> (Dummett, *Voting Procedures*, 1984, OUP, p 5).

(b) Or take the Agreement's use of the word "consent". As I mentioned in my first submission, consent to a relationship normally requires a 'yes' from both partners. But when a majority is to live happily (ever after, or for at least seven years) with its minority, it requires the consent of only the former. No love; not even lust; it is a marriage based on rape.

(c) The Agreement uses the phrase, "freely express," but, I repeat, people cannot "freely express" their will if someone(s) else have already restricted the choice.

(d) Some observers have accepted that, like Dayton and Taif, the Belfast Agreement perpetuates the very sectarianism it sought to obviate. This, I suggest, is largely due to the fact that the Agreement's authors were determined to stay inside the box of binary voting. And, it seems, so are you. If someones have an idea – like Seamus Mallon and Andy Pollak, (para 3.12), or Michael McDowell (para 11.18), or any other respondent – and if that idea is within a binary interpretation, then yes, it can be mentioned. If however another person dares to venture beyond the binary box, then he/she shall be ignored, completely, totally; not even a mention (save as one who has contributed). Your binary bigotry, it seems, has no bounds. Thus, in your report, my idea does not even exist; it is a non-idea, submitted no doubt by one best regarded as a non-person. (I lived in the Soviet Union some years ago; I do not use these terms lightly.)

Seamus Mallon's idea would have required separate – i.e., sectarian – voting registers. It was, therefore, I suggest, totally impractical. But you discuss the idea.

The MBC is colour blind. It is non-sectarian. But you don't even mention it. Like TRS or AV/STV, it could identify an outcome which does have the support of a simple majority, but you ignore it. Totally.

(e) As per the Agreement's authors' interpretation, consensus can be determined by the use of designations; and such could obviously not be used in any province-wide referendum. So that should mean the end of the Mallon/Pollak idea. {In Cyprus, where the two communities are so separate, yes, (and sure enough, it gave one side the veto); but in NI, where we're all mixed up – (and thank heaven for that) – no.} You write, "While every effort should be made to protect the consensual principle, it cannot ultimately override the simple majority principle on the question of sovereignty." (Para 1.20.) *Every effort?* Don't you mean every effort as long as it doesn't include anything which might even remotely resemble a multi-option procedure? Do you not realise that preferential voting can be a methodology which can not only identify but actually facilitate consensus?

## **B INTERNATIONAL PARALLELS**

1 In 1991, I invited Petar Radji-Histić, a native of Sarajevo, to attend the New Ireland Group's *The Other Talks*, and thus I tried to say, please, no binary referendums in Bosnia. After all, Bosnia was 40:30:20 Moslem:Orthodox:Catholic, so any two could gang up against the third, which is what happened. 40 + 20 voted, while the 30 abstained, just like the Catholics in NI in 1972.

I was ignored. The Badinter Commission, five Supreme Court judges, met one month later, and they too ignored the science. Rather, they "insisted"<sup>3</sup> on a referendum. The vote was held; it started the war. Robert Badinter wrote afterwards, in effect, "*Je ne regrette rien.*" (Private correspondence.)

2 In 1996, the Irish Government published the Whitaker Report: "Democracy works on the basis of a decision by the majority," (*op. cit.*, 398). And to prove it, they added, "The referendum has worked well in practice," (p. 498). The Balkans had just exploded! Even on this island, the Border Poll had been a disaster. Even in the Republic, the 1995 divorce referendum had been 'resolved' by a margin of less than 1%. But nothing, it seems, must, and nobody can criticise binary voting. At least other Government papers admitted that, "prior to the 1983 and 1992

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<sup>3</sup> Susan Woodward, *Balkan Tragedy*, The Brookings Institution, 1995, p 271.

referenda, the debate became bitter and polarised.”<sup>4</sup> But Whitaker? No no; yet more academics who regard binary voting as acceptable, and not only acceptable, but unquestionable.

3 In 2011, BBC Radio 4 did a one-hour documentary on referendums. So I wrote to them beforehand, to ask that they include something on multi-option referendums, the first of which, as I mentioned earlier, was in 1894. 60 minutes, but not one word about pluralism. This *idée fixe* is everywhere, fixed, cemented. So it’s not just you. It’s academia, it’s the media, it’s in law and business too. OK, I dissent. Other societies have also had their dissenters, many of whom have suffered very cruel fates. Binary voting is primitive, divisive, blunt and often, as I tried to explain, hopelessly inaccurate. Why, then, your silence?

4 In February 2016, I issued a press release to say that if the June referendum on the UK’s relationship with the EU was going to be binary, the outcome would be in the negative. Instead, I suggested the plebiscite should best be multi-optional. It too was ignored.

5 This little history of my own work suggests that you are not alone. But that doesn’t mean you are right. Indeed, a slowly increasing number is coming to the conclusion that binary votes on multi-option questions can be illogical, unfair, sometimes dangerous, often inaccurate and invariably thoroughly unscientific. As in Brexit.

6 On which point, might I suggest that “The lessons of Brexit,” have not been learnt. It went wrong, largely because it was binary. And your report is still stuck in a binary bind. The “ethos of consensual politics,” is aired, but not observed. Furthermore, there seems to be no recognition that binary referendums have been and might still be a cause of war, in Kashmir for example, or Xinjiāng. Do we not have an international obligation to at least mention if not indeed to promote a more consensual, and therefore preferential voting methodology?

Let me conclude this introduction. You say, “1.10 The Agreement is thus unequivocal: the Union or unification question is decided by simple majority votes in referendums.” That does not disallow a non-binding multi-option process prior to any final and binding decision, (see below). After all, your own discussions thus far have been multi-optional. Furthermore, “There is scope for variation within each option.” (Page x, 27.)

## C THE INTERIM REPORT

1 In my first submission, I pointed out that a simple majority could be identified in a multi-option process. You seem to be obsessed with the notion that “a simple majority” can be achieved only in a binary vote. But you’re wrong. Such a conclusion is unscientific nonsense.

2 The authors of the Belfast Agreement (and, as it happens, those of the Dayton Framework Agreement) ignored the science. The UCL Interim Report also ignores the science. I accept that the authors of the Belfast Agreement were probably not thinking of any multi-option methodology, but they are not political *scientists*. You, however, are. So why do *you* ignore the science? As noted in my submission, a simple majority can be identified in a multi-option procedure:

- (i) definitely in a two-round vote (as demonstrated in Newfoundland’s three-option and New Zealand’s five-option referendums);
- (ii) definitely in an alternative vote AV (which is the same as a single-transferable vote STV in its non-PR format);
- (iii) definitely in a Modified Borda Count MBC,<sup>5</sup> if the most popular option has an average preference score in excess of a pre-determined threshold;

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<sup>4</sup> Irish Government, *Green Paper on Abortion*, undated, para 7.93.

<sup>5</sup> The rules for an MBC mean that this voting procedure is not prone to an irrelevant alternative, as is the case in a BC.

(iv) and definitely in a Condorcet count, subject (as I mentioned) to the paradox.

You go on to say, (1.30), “While every effort should be made to protect the consensual principle, it cannot ultimately override the simple majority principle on the question of sovereignty.” *Every effort?* But, as I say, you don’t make any effort at all, not if the effort smacks of pluralism. In a nutshell, you seem to accept any idea, as long as it is within the binary framework. If it isn’t, you tend to contradict yourselves. For instance, “the principle of rigorous impartiality,” (1.29) applies only to the United Kingdom and a united Ireland; yes, any colour, as long as it’s black or white.

You say, “Lack of preparation ahead of the 2016 referendum on the UK’s EU membership was clearly detrimental to the referendum process,” without saying that a multi-option first-round, as in New Zealand’s 1992 referendum, could have facilitated a very comprehensive preparation. Are you blind?

In para 28 of your Executive Summary, you say, “...the Secretary of State... must act fairly, honestly and with rigorous impartiality.” Well he/she can’t be impartial to the many views there are in our pluralist society with a referendum which is only binary. Ergo...

Para 9.2, you “have presumed in all of [your] work that the 1998 Agreement determines the basis on which Irish unification could occur. It is not our role to propose deviations from that framework.” Yeah yeah. But the fact that Configuration 3 could have included a multi-option vote... was it even considered? As in New Zealand and Newfoundland, it would have been blindingly obvious to all concerned that the first-round multi-option poll would be non-binding, but that there was “variation within each option,” (Page x, para 27), and that this was one way in which, “the ethos of consensual politics [could] be upheld,” (para 52). As I say, your ‘pro-binary only’ bigotry is unbelievable. May I remind you of what I said in my first submission and is now repeated at the head of this second submission: in a TRS system, (and in AV) the outcome is determined by a “simple majority” – is that not understood?

## D POSSIBLE CONFIGURATIONS

Given your dismissal of only everything that I’ve written, I’m not sure if I should nevertheless try to be positive. But OK, I’ll try. May I suggest that Table 9.1 could and should include the following configuration.

	<b>What is it?</b>	<b>Should it be considered?</b>
8a. Preliminary vote before maximum model; consensus variant.	Prior referendum in NI on the various options. <i>Then</i> aspects of the form of a united Ireland worked out <i>before</i> referendums in NI and ROI so far as possible.	Yes. A preliminary consensus-seeking, non-binding first-round would obviously be in the consensus spirit of the Belfast Agreement.

A public enquiry or Citizens’ Assembly could first look at all the various options. The discussions in such a forum would obviously be of a non-binding nature. And it’s not just a question of whether a united Ireland is to be a unitary state or a federation or whatever; it could also consider the possible variations of a more devolved UK, of a UK without Scotland, of a Scottish-Northern Ireland-Ireland-Wales Celtic Union, whatever.

Politics should not be a top-down structure, where the powers that be decide that the choice of the people should be limited to just two options – the lessons of Brexit! – but a bottom-up process. Let the people choose the options, as in New Zealand, via an Independent Commission, or in a Citizens’ Assembly, whatever, as long as it’s impartial. The Newfoundland story is even more relevant: as is

its want, the British Government originally proposed just two options but, after protests on the streets of Halifax, Westminster succumbed, allowed the third option, which then won the second round. A simple majority. And the people have lived happily in Canada ever since.

Why are you so frightened of pluralism?

Such a non-binding process would allow all concerned the possibility to debate their ideas, in public. There are some who want NI to join up with Scotland; let them be heard. You and I (and the Scots!) might regard such ideas as lacking in any credibility, but put them on the table, put their protagonists under cross-examination, and let the independent commissioners find the loopholes.

The Commission could bring forward a multi-option ballot of, say, six options: something along the lines of (i) a unitary Ireland, (ii) a two-part federal Ireland, (iii) a ‘four-field’ federal Ireland, (iv) a status quo UK, (v) a more devolved UK, and (vi) a Scottish or Celtic arrangement. Let the voters cast their preferences (much as they do in PR-STV elections – it’s all perfectly simple). And then let’s see if there is support for, say, (ii) a two-part federal Ireland, in which case, that could be the second option in a final, binding referendum.

A further advantage of such a two-stage approach – a non-binding multi-option ballot followed by a binding binary poll – would be that the change, if change it is to be, would come gradually, and therefore more peacefully.

This mimics the arrangements of New Zealand’s poll. They had five options which they compared to a handful of digits: the thumb was the status quo, each of the fingers a possible alternative. In the first round vote in 1992, if a finger was more popular than the FPTP thumb – as it happens, two of them were, MMP and PR-STV – then the bigger finger, MMP, went into a second round binding majority vote with FPTP, and on an 83% turn-out (all very democratic!) by a “simple majority” of 54%, (all very simple), MMP won. Happily ever after. (Newfoundland had an 88% turnout.) You don’t only ignore the science; it seems you also ignore the history of voting procedures!

If in any future NI referendum, there is clear evidence in this multi-option ballot that there is support for whichever option comes out on top, then OK, the SoS may call for a referendum, a binary referendum, on that chosen ‘finger’ versus the (or a very uncertain) status quo.

The multi-option referendum should best be preferential. For a nationalist to vote ‘yes’ to option (iii) say, as if to vote ‘no’ against all the other options, as if to tar options (i) and (ii) with exactly the same brush as they tar options (iv) to (vi) would not be an accurate reflection of their views. And the same applies to ‘anyone else of course, to everyone, “belonging to both traditions and to none.”

And if nothing comes out on top, then OK, there shall not yet be a referendum. It is all very simple.

## **E POST-SCRIPT**

Earlier this year, on 3rd August, Alan wrote, “I have much sympathy with what you say.” And on 4<sup>th</sup>, “Many thanks for these further thoughts. They make much sense, and I’ll certainly make sure the Working Group takes them fully into account. Would you like to turn them into a written submission...”

So I did.

I spoke of the two-round system, TRS; I spoke of the alternative vote, which you refer to in para 13.27(1), but in a different context; I referred to the Borda methodologies and I mentioned Condorcet.

And Conor wrote, 24<sup>th</sup> Nov, “We found it very helpful.”

I find it very difficult to use polite language, when you yourselves write such pseudo polite and totally empty phrases. Now I know I am a dissident. But if my ideas do “make good sense,” and

are “very helpful,” then they would surely get a mention, even if you were then to analyse and subsequently dismiss them. The fact that they are ignored, totally, means you thought they made no sense, that they were not helpful.

Countless people, including the Electoral Commission EC, are also, as it were, bound by the binary bind. The EC said the 2011 referendum question was fair; as I’ve implied before, it was very unfair to all those who had wanted a system of PR. The NZ referendum, in contrast, *was* fair.

The EC said the 2014 referendum question in Scotland was fair. The winner, as noted earlier, was ‘devo-max’; but nobody voted for it. Another binary nonsense.

The EC said Brexit was fair. As Pliny the Younger noted, however, nearly 2,000 years ago, when there is no majority in favour of any one option, there’s a majority against *every* option. If there had been majority votes on the other options, a majority of 52% against ‘remain’ would probably have been the smallest; so maybe ‘remain’ was the winner.

Furthermore, if the Brexit vote had been a multi-option referendum, the late Jo Cox MP would probably still be alive. Yes, it is that serious.

As you yourselves recognise, any future referendum on NI is also very serious. I do not understand, therefore, why you ignore, *totally*, those of my ideas which comply *completely* with the words, and even more so with the spirit, (but not, perhaps, with the scientifically limited notions of the binary-biased authors) of the Belfast Agreement.

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