



SECTION 6

6.0 Summary

High Court Justice Humphreys in his book 'Countdown to Unity' explains how the 'constitutional imperative', as outlined by Attorney General Brady (2002-2007), of Articles 2 and 3 of the Constitution can be achieved by the referendum provided for in Annex A Schedule 1 of the constitutional issues of the Good Friday Agreement.

Attorney General Brady (2002-07) goes on to explain the elements of the Good Friday Agreement and of accepting the Realpolitik of a divided island.

"A fundamental principal of the Good Friday Agreement is that it is a settlement based on the exercise of the right to self-determination by the people of the island of Ireland. The requirement that the right was to be exercised, concurrently, on both parts of the island by way of a separate referendum in each jurisdiction was recognition of the realpolitik of a divided island. The reconciliation of the tension between the right to self-determination and the reality of political life on the island of Ireland is to be found in the policy of consent."

Attorney General Brady

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In this section we look at Justice Humphreys' detailed analysis of the issue of consent, of 'dual consent', and the important difference between 'a' majority and 'the' majority as referred to over the decades by various British Governments. The challenges of a referendum being concurrent in the North and South, and how that could and should be interpreted, is considered in great detail by Justice Humphreys. The options open to the Irish Government in the event that the Secretary of State for Northern Ireland refuses to hold a referendum or hold a 'testing the water' referendum are explored by Justice Humphreys. The triggering of a referendum and its likelihood of being subject to a challenge by way of a referendum petition by unionists is also discussed. The issues surrounding voter fraud in a referendum are outlined. In the

³⁵⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.xi.

event of the referendum being passed the necessity of its ratification by the Irish and British Governments is explained.

Finally, the research of the Library and Research Service of Leinster House and British House of Commons on the referendums in Quebec and Scotland, where support for separation from a larger political state could not be attained, and possible lessons for a referendum here are outlined briefly and the papers are available in full in the online appendix at the end of this section.

6.1 Recommendation

Lessons from referendums need to be learned to ensure that the Irish government fulfils its constitutional obligations.

6.2 Referendum

“The Good Friday Agreement can be contended to be a permanent feature of the Institutional landscape and to represent a clear road map towards the implementation of a united Ireland,”³⁵⁷ explains Justice Humphries.

“The Agreement may be viewed by some as a stable endpoint for political life in Northern Ireland, parking all issues of future unification. However, on another view, the agreement itself expressly recognizes the legitimacy of the drive towards reunification., as a valid political objective to be pursued by peaceful means in accordance with the policy of consent. On that basis, the agreement provides a clear road map towards an act of self-determination by the Irish People (which for this purpose includes British Citizens living in Northern Ireland) that would bring about unity, through the mechanism of an Anglo- Irish Treaty following a referendum vote.”³⁵⁸

6.2.1 Referendum South

The Agreement builds on the historic formulation used in the 1994 Joint Declaration by recognizing formally that the constitutional status of Northern Ireland is a matter for the self-determination of the people of the island of Ireland as a whole. This is reflected in paragraph 1(ii) of the constitutional issues section of the Good Friday Agreement, which provides that:³⁵⁹

³⁵⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p. 6 Introduction.

³⁵⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.135.

³⁵⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.124.

Constitutional issues

The participants endorse the commitment made by the British and Irish Governments that, in a new British-Irish Agreement replacing the Anglo-Irish Agreement, they will:

- (i) recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland;
- (ii) recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

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6.2.2 Referendum IN Northern Ireland

The constitutional issues section of the agreement provides that Northern Ireland may cease to be part of the UK if a majority so decide in a poll.³⁶¹

³⁶⁰ 'The Northern Ireland Peace Agreement' (1998)
<http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf> assessed on 6 February 2017, p.10.

³⁶¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

Annex a

Draft clauses/schedules for incorporation in British legislation

1. (1) It is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.

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The agreement makes clear that the legal mechanics for the holding of a referendum are to be the same as those provided in the Northern Ireland Constitution Act 1973 Schedule 1 (as has been seen, the one previous poll, held under special legislation in 1972, resulted in an overwhelming majority in favour of maintaining of the status quo by reason of the fact that the nationalist community boycotted the poll).³⁶³

³⁶² 'The Northern Ireland Peace Agreement' (1998)
<http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf
> assessed on 6 February 2017, p.10.

³⁶³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.123.

6.3 'The' Majority & 'A' majority

Justice Humphries discusses the concept of dual consent and goes to some lengths to explain the difference between the requirement for 'the' majority and 'a' majority to vote in favour of a proposal in a future referendum.

Sunningdale Agreement Communique

5. The Irish Government fully accepted and solemnly declared that there could be no change in the status of Northern Ireland until a majority of the people of Northern Ireland desired a change in that status.

The British Government solemnly declared that it was, and would remain, their policy to support the wishes of the majority of the people of Northern Ireland. The present status of Northern Ireland is that it is part of the United Kingdom. If in the future the majority of the people of Northern Ireland should indicate a wish to become part of a united Ireland, the British Government would support that wish.

6. The conference agreed that a formal agreement incorporating the declarations of the British and Irish Governments would be signed at the formal stage of the Conference and registered at the United Nations.

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As Humphries explains:

“The wording of the commitment of the British government to support unity is also somewhat different to that of the Irish government in the sense that while the Irish government concedes that there can be no change in the status of Northern Ireland until 'a' majority of the people of Northern Ireland desire such a change, the wording proposed on behalf of the British government is that a united Ireland would require an

³⁶⁴ The Sunningdale Agreement Communique' (1973) Available at <http://cain.ulst.ac.uk/events/sunningdale/agreement.htm> assessed on 6 February 2017.

expression of wish by ‘the’ majority of the people of Northern Ireland. This is more than a semantic difference in the sense that while ‘a’ majority is a simple test referring to 50 per cent plus one of those participating in a referendum, a requirement for the consent of ‘the’ majority might be construed as a requirement for consent on behalf of the unionist community as such, a consent which by definition could never be forthcoming as it contradicts the *raison d’être* of unionism. The logic of requiring consent of ‘a’ majority is irresistible.”³⁶⁵

Humphreys goes on to explain logically that:

“...the really fundamental reason, apart from legal considerations, why a minority or a dual consent could never act to prevent the reunification of the island of Ireland if a majority so wished, is that there is no corresponding provision at present permitting the nationalist and republican ‘minority’ to prevent Northern Ireland from remaining part of the United Kingdom. The test for a United Ireland could not in logic be different from the test for a United Kingdom.”³⁶⁶

Oliver Wendell Homes noted:

“It is hard to contend that the tests for a United Kingdom or a united Ireland are different in legal or constitutional terms. In tandem with the concept of ‘dual consent’ (which by and large has emanated from the unionist side of the equation).”³⁶⁷

Dual Consent

It is important to emphasize that both the 1973 Act and crucially the 1998 formula relate to a majority of the electorate who actually turn out to vote in any particular poll. Neither formula requires the consent of an absolute majority of the electorate, or requires consent of the electorate, but subject to a proviso that a certain percentage turns out to vote (similar to a so-called ‘ordinary’ [i.e. non-constitutional] referendum under the

³⁶⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.42.

³⁶⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009)
Ibid. P. 7 of Introduction

³⁶⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009)
p.131.

Constitution of Ireland). Nor does either test include a requirement that consent be forthcoming from both communities. There is no legal or political justification for the concept of 'dual consent' for a united Ireland as there is no such requirement for a United Kingdom.³⁶⁸

Humphreys then states:

“Neither the 1921 Treaty nor the 1998 Good Friday Agreement contains any provision for a minority to veto the basic question of which state the Northern Ireland entity will belong to. There are no vetoes, no requirements for dual consent, and no possibility for individual opt-out by particular counties or areas. The genius of the Good Friday Agreement, it might be contended, is that it permits the ‘majority’ within Northern Ireland effectively to determine which state the Northern Ireland entity will belong to, but permits the ‘minority’ within that entity a very significant share in the public administration of the six counties and a major stake in the orderly government and administration of the entity overall.”³⁶⁹

The 1985 Agreement did, however, take the UK Government to a legally binding commitment to give effect to the wish of a majority as expressed in a vote for unification, a commitment now reflected in the Good Friday Agreement.³⁷⁰

³⁶⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.41.

³⁶⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.8.

³⁷⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.66.

Good Friday Agreement

Constitutional issues

Section 1 (ii)

recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland

6.4 Freely and concurrently given

Turning now to the second problematic issue of the formula used in paragraph 1(ii) of the constitutional issues section, which relates to the precise meaning of the requirement that the exercise of the right of self-determination North and South be “freely and concurrently given”. While the requirement that the consent be freely given is relatively unproblematic, the question of concurrent consent does give rise to a difficulty in the matter of timing and form.³⁷²

There are a number of difficulties with this analysis having regard to the requirement that the consent of the people of the island of Ireland be given ‘concurrently’ in both parts of the island. The difficulty from the point of view of amendment of the constitution is that such an amendment could only have effect in the event of a positive vote in Northern Ireland, a fact that could not be known with certainty in advance. There would seem to be three possible solutions to the question of timing.³⁷³

³⁷² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.125.

³⁷³ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.126.

6.5 A question of timing: interpretation of concurrently

In 'Countdown to Unity' there are three possible solutions outlined in relation to the question of timing. The first would be not to hold a referendum in Ireland on the same date as a referendum in Northern Ireland, but rather to await the result of the Northern Irish referendum and, in the event that the result was positive, to then formulate and submit for approval a bill to amend the Constitution to give effect to this decision as necessary.

There would seem to be two difficulties with this solution.

Firstly, it could be argued that if the referenda were not held on the same day, the consent would not be concurrent for the purpose of the Agreement. Some support for this reading of the Agreement can be gathered from the fact that the referenda to approve the Agreement itself were envisaged by the Agreement as being required to be held on the same day- indeed the date was specified in the Agreement itself.

Secondly, there is the potential for some delay between the result of a poll in Northern Ireland and a constitutional referendum in the Republic of Ireland if this was to be postponed until after the holding of such a referendum in Northern Ireland.

Even if the requirement of concurrent consent did not necessarily mean that such consent had to be given on the same day, there might nonetheless be difficulties if the consent was to be given after a very prolonged lapse of time.

A further possible solution to the question of timing would be to hold two referenda in the Republic of Ireland, the first being a plebiscite on the question of unity to be held simultaneously with the Northern Ireland poll, and the second being a subsequent amendment of the Constitution to give effect to any constitutional change required on the completion of whatever processes follow from the referendum results North and South. This approach has some attractions from the point of view of logic. However, during the process of the formulating the 1998 constitutional amendment, there was a very strong desire that there would be only a single question put to the people in referendum.

Arrangements could have been made in 1998 for the submission to the people of two questions, one of which would have been an approval of the agreement in an identical form of words to that employed in Northern Ireland, and the second would have been the constitutional amendment bill.

However so great was the desire that only a single question be put that the tidy solution of the same question in precisely the same wording being employed both North and South was rejected. It could be contended that the putting of multiple questions does allow a certain amount of what might be termed 'each-way betting' by voters who might be dissatisfied with some aspect or another of the proposal. Certainly the methodology used in 1998, which is likely to be of similar relevance in any future referendum, avoids this problem by requiring voters to vote simple yes or no to the totality of the proposal.

A third possibility would be to make whatever amendments to the Constitution are required to give effect to possible future reunification well in advance, in an atmosphere of relative calm, and thus to clear the way for a single simple question to be put to referendum in Ireland on the same date as any poll in Northern Ireland, or at least on the same day as a poll likely to result in a 'yes' vote. This approach would seem to have advantages on balance, particularly where there may be other constitutional amendments required in advance to facilitate the process of reconciliation and to make the case for a united Ireland.³⁷⁴

It is certainly true that if the Secretary of State for Northern Ireland decided to hold a poll in Northern Ireland and if it was decided by the Government to hold a poll simultaneously in this part of the island, legislation to facilitate such a poll could be rushed through the Oireachtas on an urgent basis. However, there would seem to be little objective justification for the approach of leaving the matter to the last minute. The preferable approach would seem to be to introduce a bill well in advance of any proposed poll setting out the procedures that would be applied.³⁷⁵

Any legislation designed to regulate a poll for the purposes of an agreement in Ireland could be closely modelled on the referendum act 1994 with any necessary modifications.³⁷⁶

³⁷⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.126,127.

³⁷⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.128.

³⁷⁶ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.129.

6.6 Testing the water referendum

“It should be noted that just as the Secretary of State is not under an obligation to make an order for the taking of a poll save where he is of opinion that majority will vote for a united Ireland and no previous poll has been held within the preceding seven years, the Irish Government is not under any express obligation to conduct a simultaneous poll in Ireland. However, given that the purpose of the provision of the agreement relating to the matter is to vindicate the inherent right of self-determination of the Irish People, it would seem to be an implicit obligation on the Irish Government to hold a simultaneous poll where it was of opinion that the result of the poll in Northern Ireland would be likely to be supportive of a united Ireland.

“It could be contended that there would be no such obligation where the Northern Ireland poll was of the ‘testing the water’ variety and not considered on objective evidence likely to result in a change to the ‘status quo’.”³⁷⁷

³⁷⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.129.

6.7 Refusal to hold a referendum

Having outlined the mechanism within the Good Friday Agreement by which the referendum to determine the future constitutional status of Northern Ireland would be triggered, Justice Humphreys outlines the issues in the event that the Secretary of State for Northern Ireland refuses to hold such a referendum.

The Secretary of State is free to refuse to make an order for the holding of a poll unless the conditions laid down in paragraphs 2 and 3 apply, i.e. the Secretary of State is of the opinion that a majority would support a united Ireland; and no previous poll had been held during the preceding seven years.³⁷⁸

Of course at present the result of such a poll would be to retain Northern Ireland with in the United Kingdom.³⁷⁹

Clearly the decision to hold or not to hold a poll at a time when it is apparent that the result will be a maintenance of the status quo is a matter for political consideration rather than legal obligation, and arguments can be advanced for or against this contention.³⁸⁰

However, it is clear that if it can be demonstrated to the Secretary of State that it is likely that a majority would vote to change the constitutional position of Northern Ireland, then the holding of the poll becomes a mandatory obligation on the Secretary of State for Northern Ireland and he/she is required by the agreement to make an order for the purposes of paragraph 1 of schedule 1 to annex A to the constitutional issues section of the agreement. A perverse subjective refusal to recognise the manifest existence of such a majority would quite possibly have to yield to judicial review on the ground of unreasonableness. Such a refusal would also amount to a breach of the duty in international law to operate the agreement in good faith (a duty referred to expressly in the 2004 'interpretative declaration' agreed by the two Governments) and to that extent would be liable to be met with international legal proceedings by Ireland.³⁸¹

³⁷⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.121.

³⁷⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.121.

³⁸⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

³⁸¹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

6.8 The International Court of Justice jurisdiction to include Northern Ireland and the Good Friday Agreement

The Irish Government has become a member of the International Court of Justice since the 15th of December 2011. However there is an exception of any legal dispute with the United Kingdom of Great Britain and Northern Ireland in regard to Northern Ireland.

Department of Foreign Affairs and Trade

Northern Ireland is not covered by Ireland's membership of the International Court of Justice and this needs to be addressed. "In the absence of such a declaration' explains Justice Humphreys regarding the Good Friday Agreement are 'there may simply not be any international judicial venue to which such a complaint could be brought."³⁸²

"The International Court of Justice (ICJ) in The Hague, also known as the World Court, is the principal judicial organ of the United Nations. Although the Court's judgments are binding only on the parties to any particular case, given the calibre of Court's judges and its status as the principal judicial organ of the UN, decisions of the ICJ are themselves often cited as evidence of international law. The Court has given important decisions and opinions on such topics as the law of the sea, boundary disputes, the use of force and the legality of the threat or use of nuclear weapons. It operates under a Statute annexed to the UN Charter. UN Charter and Statute of the ICJ, as published in the Irish Treaty Series."³⁸³

Ireland must fully sign up to the International Court of Justice to protect the Good Friday Agreement.

³⁸² Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.122.

³⁸³ Department of Foreign Affairs and Trade.
<https://www.dfa.ie/our-role-policies/international-priorities/international-law/courts-tribunals-dispute-mechanisms/international-court-of-justice/>

Of particular concern for the issue of unity is that, in the event of the Secretary of State for Northern Ireland not allowing a referendum on a United Ireland when it is believed that a majority would be in favour, there is no current recourse for the Irish Government.

Full membership of the International Court of Justice could be a new avenue open to protect the Good Friday Agreement.

6.9 Triggering of a referendum

Humphreys argues that:

“Whether or not there are negotiations to determine the possible shape of a proposal for a united Ireland which might be presented to the people of Northern Ireland in a referendum the trigger for the holding of a referendum is identified in the agreement as being an order made by the secretary of state for Northern Ireland.”³⁸⁴

While the making of an order is a discretionary matter for the secretary of state he or she is required to make the order in the circumstances set out in paragraph 2 and 3 of schedule 1, as we have seen in the earlier discussion of the 1998 Act.³⁸⁵

Schedule 1

Polls for the purpose of section 1

1. The Secretary of State may by order direct the holding of a poll for the purposes of section 1 on a date specified in the order.
2. Subject to paragraph 3, the Secretary of State shall exercise the power under paragraph 1 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.
3. The Secretary of State shall not make an order under paragraph 1 earlier than seven years after the holding of a previous poll under this Schedule.

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³⁸⁴ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.120.

³⁸⁵ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.121.

³⁸⁶ Good Friday Agreement, 1997. Available at http://www.taoiseach.gov.ie/attached_files/Pdf%20files/NIPeaceAgreement.pdf

6.10 Referendum petition:

Those legal mechanics for the holding of such a referendum are now well established. Among the features of a referendum in most jurisdictions is the provision for a referendum petition. It can be readily envisaged that the result of a successful referendum to support the proposal for a united Ireland would be likely to be the subject of a referendum petition by some representatives of the unionist minority. Accordingly, it would be of importance to ensure that the referendum itself was carried out entirely in accordance with the governing Northern Ireland legislation and that the grounds on which a referendum petition could be brought were limited to situations where the result was not a fair reflection of the will of the people of Northern Ireland voting in such a poll.³⁸⁷

6.11 Voter fraud

In this context one issue is that of voter fraud, but in that regard very significant and stringent legislation on voter identity has been introduced at Westminster.³⁸⁸

The Electoral Fraud (Northern Ireland act 2002) appears to have brought this problem under control. Indeed, there have been numerous complaints that the problem is now the other way i.e. that the legislation has inhibited genuine voters from being able to exercise their franchise. None the less the issue of entitlement to vote, electoral registration and electoral fraud will be a key one in the context of polls for the purpose of testing the current strength of public opinion on the constitutional issue. The effect of the electoral legislation, particularly any effect that might discourage qualified voters from exercising their franchise, is in that context a significant question for consideration by the Irish Government and the nationalist political parties in Northern Ireland.³⁸⁹

³⁸⁷ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.123.

³⁸⁸ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.123.

³⁸⁹ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.123.

6.12 Ratification of the decision for a united Ireland

The standard procedure adopted to implement an international agreement involving legislative change in two dualist jurisdictions tends to be along lines involving:

Firstly signature of a bilateral agreement,

Secondly the introduction and enactment in both jurisdictions of such legislation as may be necessary to implement it,

Thirdly the execution and delivery of instruments of ratification, and

Fourthly the commencement of the agreement either by way of the delivery of the second instrument of ratification or the expiry of a certain period of time from that date, or the happening of some other specified event.

It is likely that the same sequence will apply in the event of an agreement for the handover of Northern Ireland. Indeed, the Good Friday Agreement itself envisages firstly an agreement between the two states and secondly the introduction of legislation to give effect to that agreement, with both governments committed to introduce and support in their respective parliaments legislation to give effect to that wish.

Accordingly, following the new British-Irish handover agreement envisaged by the Good Friday Agreement. and the introduction and enactment of appropriate legislation in both the British and Irish parliaments to give effect to that agreement, including if necessary a bill to amend the Constitution which would need to be submitted to referendum if that had not already been provided for by anticipatory amendments to the Constitution, both Governments would then execute instruments of ratification and deliver these instruments in a specified manner. The agreement would then commence in accordance with its terms on a specified date, which would also be the date on which the relevant British and Irish legislation would come into effect. The happening of the legal event to trigger such commencement, normally the mechanism specified in the agreement being operated possibly combined with the making of a commencement order for the legislation, would constitute the act bringing into effect the reintegration of the national territory.

‘Ratification’ of the agreement to transfer Northern Ireland to Irish Sovereignty will take place, in accordance with international law, in the ordinary way by execution of instruments of ratification on each side. The coming into force of the agreement and the formal transfer of Northern Irish will then require revision of political structures on each side but particularly on the Irish side. In crude terms, the British structures will be ‘slimmed down’ by the removal of the Northern Ireland dimension, while the Irish structures will be expanded so that a new thirty-two-county Dáil and Seanad will be put in place, the local assembly and executive recognized, local government structures recognised or created for Northern Ireland, and provision made for statutory agencies. At its most basic level two new states and parliaments will be constituted or perhaps more accurately, reconstituted, for Ireland and Britain.³⁹⁰

³⁹⁰ Richard Humphreys, *Countdown to Unity: Debating Irish Reunification* (Irish Academic Press, Dublin 2009) p.145,146.

6.13 Quebec referendum 1980 & 1995 lessons for future referendum in Ireland on unification.

There have been two referenda in Quebec in relation to the issues of economic sovereignty and separation from Canada.

The first on 20 May 1980 and the second on 30 October 1995, the table below sets out the results of both referenda.

Table 1: Results of Referendums, 1980 and 1995

Referendum	20 May 1980	30 October 1995
Registered Voters	4,367,584	5,087,009
Participation Rate	85.61	93.48
Yes (% of Valid Votes)	40.44	49.42
No (% of Valid Votes)	59.56	50.58
Spoiled Ballots (% of Valid Votes)	1.74	1.82

Source: Gagnon and LaChapelle ,1996 ³⁶

The key findings of the Leinster House Library and Research Service for the defeat of the referenda are set out in full in the research paper in the online appendix of this section but the main reasons for defeat of the proposals are outlined here. There are some lessons that could be learned from this analysis that can be applied to a campaign to achieve the constitutional imperative of a united Ireland.

Conclusion by Leinster House Library and Research service on 1980 and 1995 Quebec referendum

The 1980 referendum was defeated primarily for the following reasons:

- A lack of understanding among voters of the issues relating to sovereignty as well as promises by the federal Canadian government that it would extend greater powers to Quebec after the referendum if Quebec voted No.

By 1995 the Quebec electorate was much more attuned to the issues around sovereignty due firstly to the growing popularity of pro-sovereignty parties such as the PQ and the Bloc Quebecois and the perceived lack of progression with regard to several Canadian governments' promises to delegate more powers to Quebec. Therefore the margin of defeat in the 1995 referendum was much narrower than that of 1980.

- Nevertheless the referendum was still defeated for a number of reasons, in particular the No campaigns suggestions that, by voting Yes, the Quebec people might lose access to a range of services including their Canadian passports, social welfare and other public service programmes, the right to vote in Canadian federal elections and the loss of some parts of Quebec to native aboriginal peoples as well as the threat of being seen as foreigners by Canada.
- In addition a large rally in Montreal the weekend before the referendum swayed many undecided voters to the Yes camp, in its focus on the continuation of Quebec as a distinct state but within Canada.

6.14 Scotland referendum 2014

The referendum on the proposal of Scotland leaving the 307 year union with England and Wales was held on 18 September 2014.

The result out of over 3.5 million votes cast was a margin for the ‘No’ side against the proposal of “Should Scotland be an independent country?” was 10.6 per cent.

2,001,926 electors (55.3 per cent) voted ‘No’

1,617,989 electors (44.7 per cent) Voted ‘Yes’³⁹¹

One of the key findings of the House of Commons Library research paper entitled ‘Scottish Independence Referendum 2014’ was that surveys indicated a clear majority of ‘No’ among women and a very large ‘No’ majority among older voters. Around a fifth of respondents who reported having voted for the SNP at the 2011 Scottish Parliament election voted ‘No’, whereas between a quarter and a third of Labour voters voted ‘Yes’.

51 per cent of Scottish born respondents voted ‘No’ where as 74 per cent of those born elsewhere in the UK voted ‘No’, as did 59 per cent of those born outside the UK.

The full research paper is available in the online appendix to this section. There are some lessons that could be learned from this analysis that can be applied to a campaign to achieve the constitutional imperative of a United Ireland.

³⁹¹ House of Commons Library, Scottish Independence Referendum 2014, 2014. Available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP14-50>

An Coiste um Fhorfheidhmiú
Chomhaontú Aoine an Chéasta

Committee on the Implementation
of the Good Friday Agreement