A landscape photograph of a sunset over a valley. The sky is a mix of blue and orange, with a bright sun low on the horizon. In the foreground, there is a large, dark stone monument with a circular emblem on top. The valley below is green and hilly, with a small structure visible in the distance.

'TWO STATES, ONE SYSTEM':

PATIENCE, PRUDENCE, AND PARTNERSHIP

A STRATEGY DISCUSSION ON IRELAND'S CONSTITUTIONAL EVOLUTION

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*This paper was corrected on September 28, 2022, replacing the date of formation of the Mourne Mountains from "80 million" years ago to "around 50-60 million" years ago, pg.15. (First released widely electronically.)

STRATEGIC SUMMARY

Strategic ground rules are needed to manage future discussions around Ireland's constitutional evolution. We must prioritise the '*aisling*' (vision) of reconciliation under the Belfast/Good Friday Agreement 1998 and of uniting Ireland's people by consent under the solemn mantle and "*firm will*" of Article 3 of the Constitution of Ireland. The ground rules for these discussions should be patience, prudence and partnership, built around a 'two states, one system' philosophy. This paper explores some ideas and recommendations about how each parameter interrelates in practice.

It is timely in 2022 to reflect that Ireland and the UK are inextricably linked in a deeply complex, always oscillating, and ultimately infinite cross-cultural journey. The long-standing *status quo* is steadily destabilising. Evolution is, by definition, inevitable. But stable foundations are a prerequisite for the sustainability of future arrangements.

The genesis of this strategy paper rests in a series of op-ed columns in *The Irish News* since 2014. The intention now is to stimulate pragmatic and achievable considerations on constitutional evolution. It is not exhaustive. The original ideas were further coalesced and developed into a range of 'Two States, One System' papers circulated privately and publicly in 2020 and 2021, including submission to the consultation on Ireland's constitutional evolution by the Constitution Unit at University College London. (NB. Author's note: A summary of the originating proposals is at *Annex A*. Full papers here: https://www.ucl.ac.uk/constitution-unit/sites/constitution_unit/files/jarlath_kearney_-_2_sept_2020.pdf; <https://twitter.com/JarlathKearney/status/1361041039453208578>; https://www.ucl.ac.uk/constitution-unit/sites/constitution_unit/files/jarlath_kearney_uclcu_final_submission_-_19.01.21._1.pdf)

PATIENCE

Now is a time for supreme patience. We need to carefully absorb the nature and extent of national and international disruption to the existing world order; to internalise and assess how that may all affect foreseeable realities across Ireland and the UK; and to carefully develop ideas that will stabilise and strengthen this island – and our nearest neighbours – with only the certainties of uncertainty stretching out ahead.

It is a time to study and understand the complex nature and machinery of delivering social change and public policy reform within the realities of existing and ongoing governmental structures, including improvements to the effectiveness of the Northern Ireland Assembly and Executive. The alternative to such patience is to voluntarily plunge Ireland into further societal chaos without due or rational regard for the foremost function of government as public service, or for future unforeseeable risks.

PRUDENCE

Now is a time for prudence. It is vital to measure and moderate the range of actions and words today that could either damage or develop our attitudes for tomorrow. Precise definitions and detail about emergent ideas and concepts will be critical to improving societal understanding and direction. For example, the lack of details and distinctions between headlines of a 'new Ireland', 'shared Ireland', 'united Ireland', 'reunification of Ireland', 'Irish unity', 'ending of partition', 'national self-determination', or 'the ending of British rule', fail the test of substance in *realpolitik*.

Likewise, there is urgent need to confront the creeping and concerning discourse that - intentionally or otherwise - could muddy the fundamental democratic principle of consent based on a majority of those voting in a plebiscite over Northern Ireland's future constitutional position. Anything that undermines the long-standing principle of consent, endorsed by referendum in 1998, would be a grave mistake.

PARTNERSHIP

Now is a time for steadily building partnerships. We must recognise that the narrow border poll element of conversations on wider constitutional evolution would need basic frameworks and functions that haven't even yet been widely acknowledged – never mind explored. In particular, a new Treaty-based rapprochement would be formally required between Ireland and the UK.

Objectively, this new agreement is many years off, with bilateral politics first requiring much more settled EU-UK relationships leading to the return of a stable partner in London later in this decade.

We must also recognise that the unfulfilled reconciliation strand of the 1998 Good Friday (Belfast) Agreement still has substantial potential to deliver societal improvements – and genuine unity of people – across Ireland based on a firm foundation of equal rights and mutual respect. Partnerships within and across these

islands under the ethic of the 1998 Agreement, particularly between those of different perspectives, are a prerequisite - not an optional extra - for positively nurturing our collective evolution.

COMPLEXITY

This island's constitutional evolution involves broken people and structures striving to recover dignity after decades of brutal armed conflict, in all of our deeply complicated and interwoven destinies and dreams, while facing into increasingly pressured daily lives. These complex needs require actual bread and butter on the table today, not just the promised scent of constitutional roses for tomorrow.

There is no sustainability in arguments which subjectively exploit or skew statistics, data, or demographics as a simplistic cognitive bias for confirming pre-existing outlooks; nor which constantly set up superficial and shifting competitive binaries between the North and South of Ireland, or the communities that live in each state's jurisdiction, as if these arguments exist within a vacuum from wider geo-politics.

The latest NI Census 2021 results (<https://www.nisra.gov.uk/statistics/2021-census/results/main-statistics>) released on September 22, 2022, strongly reinforce the increasingly multi-layered complexity of Northern Ireland's population, and absolute need for careful consideration of societal trends, challenges, and opportunities.

In line with previous trends from the 2011 Census, a growing number of Northern Ireland's population now express their identity in terms of 'island of Ireland' identities - Irish 29.13% and Northern Irish 18.78%. That trend will continue and the need to bridge it in practical terms, while cherishing the shrinking British only identity (31.86%), is key.

Objective, evidence-based policy planning is paramount. In turn, this reinforces the requirement for mature, stabilising strategic ground rules around all considerations that may arise about our future constitutional evolution.

REALPOLITIK

It is therefore particularly important that any actors promoting any constitutional change in any direction for Northern Ireland should now publish their specific proposed changes for the Constitution(s). The difficulty with abstract concepts, such as a headline Brexit demand or a border poll on Northern Ireland's future constitutional status, is that they sometimes impair effective outcomes. One problem with headline

demands is that they can provoke headline denials. In the midst, sustainable and creative policy options can get lost.

It is critical to identify and register, in wider society, the core *realpolitik* upon which stable and serious policies for intergovernmental and inter-island interdependence can continue to be built and fashioned. No major, mainstream voice today in Ireland or the UK is demanding the unilateral dissolution of Northern Ireland as an entity over the immediate-term, short-term or medium-term - notwithstanding ongoing constitutional discussion. How could they do so, since that demand would be rejecting the outcome of self-determination that formally approved the 1998 Agreement, and would thereby also be rejecting its related primary legislation which is the only means under which constitutional evolution can actually be mandated and mechanised? Such a position would be unsustainable.

CONSTITUTION AND COMMONWEALTH?

Broad consensus already exists (albeit usually only acknowledged universally *sub rosa*) among the mainstream polity of political, governmental and civic leaderships across Ireland and the United Kingdom. This consensus recognises that the two states will continue on the island of Ireland for the foreseeable future. The *realpolitik* of that structural format will now endure at least into the 2030s – notwithstanding any border poll. There is no viable short-to-medium term alternative. Once one acknowledges, tacitly or explicitly, that the two states will continue to exist side-by-side on Ireland for the foreseeable future, even in the context or the aftermath of theoretical changes in sovereignty (and perhaps especially so, in that situation), then other elements of the immediate societal conversation become more manageable, open and realistic.

Sophisticated but practical constitutional options can emerge for consideration. For example, one potentially viable model that could be considered for the next phase of constitutional evolution would involve Northern Ireland continuing as a state but, post referendum, moving under the constitutional sovereignty of Ireland and its presidency (including full European Union membership) whilst concurrently maintaining its full membership within the Commonwealth (which retains the UK monarch as its head).

These kinds of considerations mean that the socio-political priority of the 2020s must be around enhancing and implementing maximum delivery of effective ‘one system’ thinking across both jurisdictions. ‘Two states, one system’ provides the philosophy for the next focused period for the island of Ireland’s journey. With prudence, patience and partnership, the rest of the evolutionary cycle will unfold accordingly.

REALITY CHECK ON CONSTITUTIONAL EVOLUTION

Ireland's constitutional evolution is inevitable. That is the nature of evolution and human existence. But the duration, design, quality, direction, and characteristics of that evolutionary change will be dependent upon the origins of its pathway. The evolutionary roadmap will take time to appear, carefully analysing the topography of the horizon while exploring maximum consensus about the most viable routes ahead.

And yet, concurrently, the island of Ireland's future exists now – quite literally – in today and tomorrow: it is not some theoretical concept or campaign objective that rests in the vague rhetorical mists of 10 or 20 or 30 years away.

It proclaims and demands Martin Luther King's "*fierce urgency of now*" in addressing social, economic, and environmental challenges - today. An effective response to those realities is not conditional on the outcome of the glacial nature of constitutional change. What's more, these challenges are commonplace across all sectors of society notwithstanding one's constitutional preference. They should be common priorities for political attention despite differing approaches and policies to their resolution.

A SOCIAL CONCEPT

Ireland's constitutional evolution is a social concept. It encapsulates thousands of issues, millions of people and billions of thoughts; individual life experiences and interests; multiple ancestries and antecedents; infinite roots and roadmaps, many only beginning to recover from the legacy of armed conflict – some tragically not even started. Each strand is intimately overlaid and interwoven with hundreds – perhaps thousands – of other lives, with characteristics of practical complexity and cultural diversity across the islands of Ireland and Britain that will forever bind the past, the present and the future.

INTERDEPENDENCE

Ireland's constitutional evolution is not just about Ireland. It demands a recognition – across and within wider Irish society – that constitutional evolution requires a higher philosophical perspective and political insight, not solely on ideological or theoretical terms. Such philosophy and insights need to see Ireland within a complex context of systems and frameworks of contemporary geopolitics and geoeconomics – especially through interdependencies with our nearest neighbours. Productive relationships across the United Kingdom and Europe are increasingly necessary to assure our daily existence: energy supplies, food security, economic growth, cultural exchange, communications infrastructure, national security, population movement, and crises.

If Ireland's constitutional evolution is continually presented as the automatic answer to Brexit, then, by definition, it risks becoming a mirror image of extremist English nationalism, and driven by similarly negative and selfish interests. That would not only be both unstrategic and tactically inept: it could also ultimately become societally dangerous and divisive, promoting an underlying swagger and arrogance replete with the sulphuric stench of Irish nationalistic purity. The risk of that 'swagger' is more worrying, prevalent, and potent than many have yet acknowledged or even understood in Irish society. Much greater self-awareness is needed.

History is a long-term ebb and flow of multifarious push and pull factors over which most countries and states, and their governments, today no longer ever have absolute control or total sovereignty (such as pertained in past centuries). Ireland exists, and will evolve, in just such an interdependent ecosystem. One of the great risks to progressive constitutional evolution would be if an exclusivist groupthink began to hold sway (and swagger) in the public square without strong alternative perspectives.

GEOPOLITICAL CONTEXT

Sustaining and improving the future of our first world - and potentially first-class – island society demands rigorous attention in the arena of social reform, here and now. The life opportunities of Ireland's schoolchildren today will not automatically be improved simply by anyone still trying to conquer the unfinished battles of our past – whether for the Holy Grails of an 1801 imperial 'union' with Great Britain or some antiquarian prefabricated notion of 'Irish unity' on this island.

Sovereignty, as it was conceptually understood a century - or even 50 years - ago, no longer exists. It cannot be resurrected by a small island nation on Europe's periphery.

The geopolitical ecosystem of 2022 is infinitely unrecognisable from that which framed the Ulster Covenant of 1912 and the Easter Proclamation of 1916, or even the Anglo-Irish Treaty of 1921 and the concomitant scar of partition cruelly imposed by London which has since divided the island and people of Ireland.

The truth is that the impact of partition cannot ever simply be reversed, even if the island itself can one day be restored into some form of a single jurisdictional unit of government. Ten years ahead, by 2032, wider geopolitics will have again transformed utterly in ways that we cannot yet even imagine today, never mind define. Ireland does not sit in a historical vacuum from that situation. 'Unknown unknowns' abound.

CHALLENGE

A cold reality check is needed. 'History' is so-called for a reason. Principle must always be balanced against pragmatism. The challenge for all sides in Ireland today is this.

The consideration of constitutional evolution must be firmly grounded upon deepest generosity and wholehearted honesty about our motivations; underpinned by analyses of full objectivity and evidence; guided by the expertise of public policy practitioners - not just elites of politics, civil society, academia, media or business; tested against the realistic achievement of a greater common good; and overarched by a pragmatic understanding of the practical machinery of social change in the ever-shifting context of geopolitics. If that doesn't happen, then - at best, at very best - the conversation will become little more than a lightning rod for histrionics that distracts and detracts from desperately urgent demands for contemporary socio-economic transformation. That would be a colossal, unforgivable waste of time, energy and opportunity.

This challenge involves the relentless hard yards of unspectacular work in steadily developing systems of rights, respect, rapprochement, and reconciliation; a policy culture of economic opportunity, social equality, public inclusion and participation, delivered by creative public sector expertise. It cannot be achieved by artificial deadlines for border polls with peremptory demands for predetermined destinations.

Nor can it be achieved by anyone believing that the current constitutional framework on the island will exist forever, fossilised through some kind of political cryonics. It requires that those most vociferous in demanding constitutional change - and those most resistant towards it - must respectively put forward their specific changes to the Constitution(s), or their detailed improvements for the *status quo*, something that has not yet happened. When they do, all ideas can and should be carefully considered.

FRAMING THE CHALLENGES

The United Kingdom is currently convulsed by a profound and disastrous constitutional crisis. Even from the most optimistic analysis, the crisis will only be properly starting to settle by the late 2020s. It would be disastrous for Ireland to be sucked down the very same rabbit hole of nationalistic culture wars by mirroring such a crisis that – wittingly or unwittingly – leads to the unpicking of Northern Ireland’s peace settlement, the Good Friday/Belfast Agreement 1998, at a time of unprecedented generational socio-economic challenges.

In the days following the Brexit referendum in June 2016, this author assessed the situation as follows:

“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 copper-fastens 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." ('Time to take stock after Brexit victory', The Irish News, 29 June 2016)

RIGOROUS IMPARTIALITY

The UK's pathway towards constitutional self-harm is one that can only possibly be explained by Brexit's strongest proponents. It's often overlooked in Ireland that one of the main casualties of Brexit is the Conservative party itself, which historically managed to bind a broad spectrum of socially liberal and fiscally conservative interests under one umbrella of constitutional convention, custom and practice. That is now fundamentally ruptured.

The UK political party system is already in the process of some form of realignment. In direct tension with the 1998 Agreement, Brexit has witnessed a clear lack of rigorous impartiality from the English nationalist grouping within the Conservative party government towards the sensitive issues and politics of Northern Ireland.

That appalling dereliction of duty would be exacerbated further today by an additional ingredient: namely, a contrary lack of rigorous impartiality being exercised by Ireland's government on the most sensitive issue of constitutional evolution. Therefore, the greatest care must be taken by the Irish government in relation to populist demands

for a formal all-Ireland citizens' assembly on preparing for a border poll, constituting - as it does - only one element of the 1998 Agreement's interlinked package.

LEADERSHIP

Little consideration appears to have been publicly given to the serious implications that could accrue to the Irish government - and the 1998 Agreement - if it was to unilaterally exercise a potentially *de facto* form of unlawful extra-territorial jurisdiction, without constitutional authority, to formally establish such a citizens' assembly inside United Kingdom jurisdiction over the future of internal Northern Ireland matters. If mishandled, this could directly undermine all three strands of the 1998 Agreement.

If the Irish government is pressured into acting unilaterally on a citizens' assembly for the discrete border poll element of the 1998 Agreement, then it could lose substantial moral credibility and authority to hold others to account for similar behaviour. But this consideration also begs a bigger question. If the societal objective is really about fully protecting and promoting the 1998 Agreement (including the border poll element), why wouldn't requests for an Irish national citizens' assembly (i) cover all of the unfinished elements of the 1998 Agreement as an interlinked package of measures, and (ii) be consistently raised as a formal request jointly to both governments?

The answer to the chaotic government of Brexit is steady leadership in Ireland. In addition, the solution to issues within the Agreement, or parts of it, is already formally established *via* inbuilt review mechanisms. These mechanisms require both governments to act jointly, and, when appropriate, in consultation with Northern Ireland's parties. Ultimately, Ireland and the UK are now post-colonial allies and equals in the international arena: that is the moral and political summit of leadership on which Ireland's government, and honourable voices in London, should always stand.

PRAGMATISM

It is rarely spotlighted that authority over triggering a vote on Ireland's constitutional evolution was willingly and voluntarily delegated by Ireland's political parties to the UK Cabinet under the 1998 Agreement. Since then, no issues have ever arisen in formal negotiations about the application of extra conditions or criteria. It was also endorsed under concurrent acts of self-determination by the people of the island. So, was that merely short-sightedness and strategic ineptitude by the participant negotiators? Or was it, in fact, a pragmatic and sensible recognition of *realpolitik* for the greater good of consensual agreement in the prevailing constitutional circumstances?

An objective reading of history would say that giving singular *locus* to the Secretary of State to call a border poll was a decision of common good and *realpolitik* by those who negotiated the 1998 Agreement. Constitutional issues are, after all, only in the domain of sovereign governments, and the UK remains sovereign in Northern Ireland.

As the current wave of Irish constitutional evolution runs through this next generation of history, similarly pragmatic leadership will be needed in all corners to help stabilise society, steering the tidal flow towards important fundamental realities and more settled shorelines on both sides of the Irish Sea.

RAPPROCHEMENT

Reasoned and responsible constitutional evolution will ultimately not be forthcoming without a new rapprochement and a rigorous management framework between the governments of Ireland and the UK, whatever timescale that takes. That does not mean that Ireland's destiny should forever be unfairly arrested and land-locked by unlimited chaos in London: (natural evolution means it will not).

It does, however, mean that patience and prudence are beneficial qualities in understanding that, ultimately, partnership must be the prerequisite for the mechanics of constitutional evolution (especially a border poll) – never mind for the more fundamental work of building a better society across the island. The complexity of these processes must today be fully acknowledged.

Unilateralism of any kind runs against the 1998 Agreement, whether it is for Brexit, used improperly as a veto against progressive social reform in Northern Ireland, or demanded assertively under the campaigning demands of some kind of 'moral' *force majeure*. The requirement of a new Ireland-UK management framework will therefore probably need to take the form of a new international Treaty-based pathway that augments the existing, continuing, and overarching primacy of the 1998 Agreement.

That Treaty outcome will need to be built upon a substantial and sophisticated process of governmental engagement and dialogue among interested parties in politics, civil society, third-sector, business, and policy-making sectors, and the wider community, probably building on the foundation stones of the Irish government's current Shared Island initiative. How else could the necessary concepts, proposals, ideas, timelines, options, challenges, opportunities, resources, and *fora* be practically shaped in ways that can inclusively be delivered through the machinery of public government?

STABILITY

We are now facing a decade of avoidably deep constitutional uncertainty piled upon the certainties of profound socio-economic crises devastating the poorest sections of society. Stability and good sense are increasingly required for the island of Ireland, protecting and promoting the 1998 Agreement in 'all its parts', and carefully beginning to ready this island's polity for future engagement and fruitful discussions about constitutional evolution with a renewed partner in London as normative stability begins to resettle in Westminster. That will take some time, but it will happen. It certainly will never be delivered by demands for unilateralism.

Rational engagements and analyses are needed. The political and economic powerbrokers in London are no more monolithic than the wealthy stakeholders and stockbrokers in Dublin or Belfast. New alliances and relationships matter with the wider UK citizenry, and its establishment, as much as they do with big business and elite interests courted in the USA who are understandably and eagerly eyeing up the Irish market from polished walnut desks on Wall Street.

And the reverse applies, even moreso, to London's currently appalling dereliction of duty over its solemn responsibilities. The grievous damage inflicted on the ethos and ethic of the 1998 Agreement by reckless Brexitology will require substantial long-term efforts and remedies to begin restoring the necessary relationships in Ireland.

In the current legal and political realities, the wise perspective of Irish Supreme Court judge Richard Humphreys, writing in 'Reconciling Ireland: Fifty Years of British-Irish Agreements' in March 2021, is worth recalling:

"The history of British-Irish co-operation in relation to Northern Ireland is sometimes obscured by a parallel story of conflict and crisis. But looking back over nearly fifty years of Anglo-Irish cooperation since Sunningdale, there is much to celebrate. The two governments have frequently been bold and far-seeing, with other interested parties tragically taking time to catch up... Close cooperation by the governments to implement the Good Friday Agreement and related agreements will be fundamental to negotiating the wider challenges that lie ahead. Peacefully navigating future debates will require not only fairness and good faith from both governments but also immense patience, diplomacy and flexibility."

THE IMPERATIVE OF PATIENCE

Slieve Croob is a small hill about 25 miles from Belfast in the Dromara Hills. On the finest of days, the vista sweeps around from county Down's nearby mystical Mourne mountains, geologically formed around 50-60 million years ago. The perspective opens far down south towards Brú na Boinne - Ireland's 'valley of the kings', boasting wondrous tombs and monuments older, yet more advanced, than the great pyramids of Giza.

The eye sweeps westwards across the broad saddle of central Ulster towards Armagh, Tyrone, Derry and Antrim, visiting around the sparkling northern lights of Lough Neagh and Belfast Lough and the natural hairpin of Strangford peninsula. Out east over the Irish Sea, the horizontal perspective is formed by west Scotland, north England, and part of Wales, with the Isle of Man nestling in the foreground. The surrounding countryside holds the secrets of dolmens and souterrains dating back over centuries and millennia. It's a hill that holds the heart. Other than waterways and hedgerows and forests and fence lines, you don't see a single sovereign division separating one citizen from another: constitutional borders are a human and social construct.

SENSITIVITY

The various cultures and social systems that were developed by those who settled across Ireland over thousands of years have slowly evolved and, just like Slieve Croob, folded within the fabric of the local landscape. Every generation has gone through its own processes of conflict and conciliation to build systems for social coexistence and communal organisation. Such processes never end, nor do they neatly comply with election cycles or predetermined timelines, or historical lines on maps. It is the same with every nation's constitutional evolution and systems of civil order.

Outright opponents of calls for a border poll need to begin recognising that its current prominence is an authentic and understandable reaction of many people with Irish and Northern Irish identity - not least to the morally corrupt abuses of power in

Downing Street over the Johnson years, including *inter alia* the approach to Brexit, economic injustice, and breaches of Covid rules. Concurrently, the great urgency demanding a border poll needs to be moderated against the tears and fears in country lanes and city streets across the North that are still breathing the lived memory of brutal and bloody conflict, where heavily burdened but gently hopeful hearts still smoulder with the impact of murders and marches, and burnings and bombings, and lost lives and stolen opportunities, on every side of every heartbroken community.

These very real, deep, and ongoing scars intrinsically deserve the humanity of vast patience and deepest sensitivity when anyone imagines to pontificate about the next stage of this island's evolution. These wounds are not yet close to fading into ancient folklore or historical record.

INSTITUTIONAL REFORM

Great patience is also required at a more instrumentalist and institutional level. A brief reminder of the campaign for fair employment is useful in this regard. There are many lessons from the experience of 50 years of fair employment campaigning in Northern Ireland, particularly understanding the way in which delay or delivery can be intentionally (or incidentally) affected by a vast array of internal and external factors on governmental decision-making and wider societal development.

By the early 1990s, a range of significant factors were forcing greater effectiveness in addressing religious and political job discrimination within Northern Ireland. These included the external impact of the MacBride Principles campaign; effective political and governmental lobbying by Westminster opposition parties and the Irish government (particularly after the Anglo-Irish Agreement); focused surveillance on the issue by US monitors, human rights organisations, and key academics; the genuine efforts of officials internally within the public sector; and a quiet recognition within Whitehall (particularly the Foreign Office) that the enduring discrimination was prolonging the circular ecosystem of terrible armed conflict as well as deeply damaging the UK's international reputation. The societal system had to be addressed.

One of the most significant elements of the new legislation was compulsory monitoring of the employment practices and workforce patterns of the majority of Northern Ireland's employers. This involved the annual collation and publication of workforce monitoring based on employees' religious affiliation and gender. Monitoring became an important cultural and moral pressure for encouraging change alongside other new measures.

Equality and anti-discrimination measures became central to the negotiations resulting in the 1998 Agreement, including full incorporation of direct remedies under the European Convention of Human Rights.

Additional legislation and measures were introduced to bolster the existing provisions, with the establishment of a new central Equality Commission combining the existing oversight bodies and laws on fair employment, equal opportunities, racial equality and disability. The policy mainstreaming of public duties to promote the need for equality and desirability of good relations across government was introduced, along with a range of wider safeguards on rights and equality of opportunity.

LONG TERM

Northern Ireland's workplaces are today increasingly shared and diverse, especially across the public sector. This has directly encouraged much greater societal integration and grassroots reconciliation than was seen in previous generations.

The importance of policy patience (with persistence) has been paramount in achieving such positive social reform – even while one is personally impatient for change. Job discrimination was historically an accelerant for armed conflict.

Fair employment has been a steady work in progress, and as demographics change and society shifts, the current frameworks and mechanics will have to evolve further. It took 25 years to achieve the necessary legislative changes: it's taken a further 25 years to measurably map the transformation.

More patience alongside diligent outputs is therefore needed in focusing on these kinds of basic practical concepts for social reform, and the difficult but transformative work of visibly enhancing societal equality and rights. Such efforts would be a positive policy contribution to Ireland's constitutional evolution for everyone in the time ahead.

In this regard, the Irish government's Shared Island initiative again deserves much greater credit for its long-sighted, iterative understanding about the need to steadily build bases of genuine dialogue with empirical evidence and creative policy innovation across Ireland that can steadily improve societal integration.

In any set of interrelationships, the development of meaningful and respectful communication is first required in order to genuinely build grounds for the necessary cooperation and consensus – especially where actors fundamentally disagree.

ONE SYSTEM THINKING

The practical machinery of public government to achieve societal reform takes time, especially with the manifold elements that constantly affect such efforts. In a Brexit-world, with major political, social, economic, environmental, technological, security and health disruptors now destabilising Ireland and the UK, and their international partners (USA, EU, NATO), it is axiomatic that substantial strategic political effort must be focused - over the short-to-medium term - on maximising 'one-system' approaches towards the progressive and complementary improvement of both states on the island of Ireland.

The bald truth is that our polity collectively still doesn't know enough about the experiential practice of good government in Northern Ireland in order to even begin the requisite planning for total and irreversible public service transformation across the entire island.

That is not least because of a disposable attitude by some republicans and some unionists towards regularly weaponising the rich yet unfilled potential of the Assembly and Executive. The devolved institutions are still underdeveloped and immature.

If proponents of change cannot deliver real social reform at a local level in cities and towns, by using targeted budgets to address long-standing patterns of structural deprivation and exclusion affecting the sectors of greatest inequality within the areas of greatest objective need, how then do they intend to effect macro societal transformation with mature public institutions of a neighbouring state a national level?

If all of us are not willing to start seriously discussing the implications of such detailed, practical considerations and scenarios (and others), how is the practical pathway even ready to start achieving sustainable and successful steps to constitutional evolution?

If supporters of the United Kingdom *status quo* simply hunker down and seek to pretend that some form of constitutional evolution is not now inevitable, how is that positively serving the people and culture with whom they are attached?

And if the UK government does not begin to urgently fashion informal foundations with Ireland's government that can help foster a future formal process of Treaty-based rapprochement over the coming generation to consider these issues and much more, how else the inevitability of evolution going to be managed and manageable?

THE PRACTICE OF PRUDENCE

For an entire generation of voters - those aged under 40 - it's difficult to adequately describe the appallingly visceral devastation of human dignity that was wrought by the intensity of sustained armed conflict and structured social divisions in Northern Ireland's past. For many of those aged over 40, it was - for three decades of lost lives, blood and tears - almost impossible to envisage the emergence of any path of peaceful and agreed evolution that could begin to establish the primacy and legitimacy of politics.

PATHWAYS

Writing in previously unpublished private correspondence (to this author's late father, Oliver Kearney) during January 1998, the influential Special Advisor to successive Fianna Fáil Taoisigh, Dr Martin Mansergh, foreshadowed the impending political bargain. He correctly insisted that embedding a new international Treaty-based peace agreement for Northern Ireland's self-determination around the '*principle of consent*' was the only '*practical political option*' for both Ireland and the UK:

"Repudiation of the principle of consent (as opposed to emphasising the importance of two-way consent and embedding it in a broader doctrine of self determination) is not a practical political option for us. (...) Any agreement will, as we discussed, need to leave the path of peaceful evolution to a united Ireland, by agreement, entirely open, and this will have to be explicitly provided for in any new agreement as well as in constitutional law both British and Irish. It all boils down to whether we can accept, in conditions yet to be established by agreement, that a majority in NI will have the right accepted by us to determine which of the States it will belong to."

When the 1998 Agreement was reached 10 weeks later, it had been preceded by the construction and discursive framing of key issues by both the Ireland and UK governments, and others, through intensive and systematic dialogue to shape

perceptions and expectations over two decades from the early 1970s. This included the mainstreaming of its foundational discourse and concepts, such as in the Anglo-Irish Agreement 1985, the Downing Street Declaration 1993, and the Joint Framework Document 1995. The Agreement provided the carefully constructed and binding constitutional bargain between Ireland and the UK that nurtured that 'path to peaceful evolution' – including, *inter alia*, the extant potential of a united Ireland by the principle of majority consent voting in a border poll.

SELF DETERMINATION

In May 1998, the Agreement was ratified by concurrent acts of self-determination across the two states on the island of Ireland. The core principle of consent - that a majority of voters in a poll would determine Northern Ireland's future sovereignty - was the "*only practical political option*" for an agreement that ultimately became successful in ending large scale, organised armed violence. Much is made of the nuance of constructive ambiguity within parts of the 1998 Agreement to ensure that its creative representation was a 'win-win' for all sides. But the prudence of its core constitutional bargain lies in the precision and simplicity of the consent principle.

Article 1 of the Ireland-UK Treaty that provides the formal basis for the 1998 Agreement, and that was lodged with the United Nations, states that the two governments hold a joint understanding and commitment to the clear principle of majority voter consent within the jurisdiction of Northern Ireland as the arbiter for any future constitutional change. It offers only two options in that regard: "*to continue to support the Union with Great Britain or a sovereign united Ireland*". It requires majority votes in both states on Ireland, stipulating that "*it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people*".

It commits that there is a "*binding obligation*" on both governments to respond to positive votes on the desire to support a sovereign, united Ireland by introducing and supporting legislation to that effect in their respective parliaments. It affirms that, whatever the results after the principle of consent is tested, "*the power of the sovereign government there shall be exercised with rigorous impartiality on behalf of all the people*"; and it recognises the birthright of Northern Ireland citizens to identify and be accepted as "*Irish or British, or both, as they may so choose*".

Article 2 of the Treaty affirms the solemn commitment of both governments "*to support, and where appropriate, implement*" the 1998 Agreement.

As a consequence of this Treaty, the Irish government's obligations in implementing the 1998 Agreement involved introducing constitutional amendments *via* referendum that established a new basis for the relationship of Ireland with the state of Northern Ireland. Under the title of 'The Nation', the amended Articles 2 and 3 represent a highly sophisticated framework for the complexity of the constitutional evolution of a "united Ireland" placing the objective to "unite all the people" at its heart. Article 3 includes:

"It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island."

CONSTITUTION

In addition, within the terms of the multi-party 1998 Agreement, identical conditions and sentiments were endorsed by the participants and ratified *via* referendum in Northern Ireland. It is beyond any doubt or dispute that the settled will of the people of Ireland, North and South, and the constitutional law position in both jurisdictions, is the binding principle that simple majority consent of those voting in polls in both states is required for constitutional change.

In particular, all of the 1998 Agreement's participants noted without dissent that the revised constitutional imperative of the Irish nation is a "firm will... in harmony and friendship, to unite all the people" on the island. This section on 'Constitutional Issues' was the opening part of the Agreement. These elements of the 1998 settlement have never been subject to any political dispute or efforts at renegotiation.

The UK subsequently introduced the Northern Ireland Act 1998 as primary legislation to implement its commitments. This statute, and the related body of law incorporating the Ireland-UK Treaty, was designated in *Robinson v Secretary of State for Northern Ireland* [2002] UKHL32 as "in effect a constitution" and a "constitution for Northern Ireland" by the Law Lords, now Supreme Court, of the UK, attaching to it a purposive character of statutory interpretation.

The 1998 Act once again enshrined the established principle of consent. Any referendum would be based on the Secretary of State's broadly delegated decision to trigger such a poll if such a majority "appears likely to him" (*sic*) as an outcome.

Section 1 states:

“(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.

(2) 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.” (Emphasis added.)

‘LIKELY MAJORITY’

In the almost quarter century since the 1998 Agreement and its constituent bodies of quasi-constitutional law, including the 1998 Act and relevant caselaw, this formula has been the constitutional bedrock of Northern Ireland’s peace settlement. On one hand, it provides a route for constitutional evolution requiring a Treaty-based agreement on future modalities. On the other, it provides the security of democratic self-determination within the Northern Ireland state. It is the settled constitutional position.

Crucially, and this is something that proponents of urgent constitutional change must absorb: the Secretary of State’s requirement to order a poll is predicated on an assessment of a “likely” majority seeking change for a “sovereign united Ireland” – not on the perceived loss of a majority previously supporting the existing status quo, which already is arguably evident through voting, polling and Census data within Northern Ireland. The former is a proactive threshold that must be met in its own right, notwithstanding any parallel evidence of ongoing disaffection or disgruntlement with the *status quo*. This is not just a pedantic point: it is a fundamental consideration in determining the application of the constitutional law test. And it behoves proponents of rapid constitutional change to exercise great prudence on this point.

PRINCIPLE OF CONSENT

Prudence is also required within both governments to ensure, whether by design or default, that the principle of consent – as outlined – is permanently protected and preserved inviolate from any external influence that may begin to redesign its content or its meaning. In the public discussions about the Ireland/Northern Ireland Protocol,

an increasing trend has developed over the past 18 months that seems to confuse the settled principle of majority consent of those “*voting in a poll*” on self-determination with other more malleable concepts like consensus and parallel consent which are mechanics within the ethos of Northern Ireland’s power-sharing Assembly. While such confusion is potentially caused only by the loose use of language, it behoves all stakeholders – particularly the Ireland and UK governments – to ring-fence and defend the settled principle of consent.

Having established that the principle of majority voting consent is the primary fulcrum of Northern Ireland’s current constitutional framework, it is of course proper and legitimate to distinguish and delineate the political elements, concepts and steps that would be required in order to reach the testing point.

Prime among these is the concept of informed consent, which is borrowed from legal and medical ethics, and which means that a citizen must be conscientiously informed and consciously aware before they enter into a potentially transformational situation with a third party such as a medical operation or a binding legal contract.

Achieving maximum political consent freely given for constitutional evolution - based on the fully informed consent of voters after a considered period of detailed information, engagement, exchange and education - is obviously the most desirable outcome across Ireland, even though it is not legally required in constitutional law.

RISK

There is still a worrying lack of attachment to this kind of clarity within some sections of the UK government. In particular, Lord David Frost - who negotiated the Protocol that he now eschews, but who remains prominent on the English nationalist wing of the Conservative party - recently raised on Twitter his particular understanding of the UK’s constitutional framework, albeit speaking primarily about Scotland, stating:

“In my view it is obvious and correct that, if the settled will of the people in part of a state is that they are not part of the demos of the state, but are a demos of their own, then in a modern democracy that has to be respected. But that settled will must be of a significant majority and demonstrated over a decent period. It can’t be based on endless campaigning in the hope of just squeaking over the line.” (@DavidGHFrost, 21 August 2022, <https://twitter.com/DavidGHFrost/status/1561432374218555396>.)

This public commentary was followed by a Sunday Times story suggesting that a majority of the population – not of participant voters – could be introduced as the new threshold test for any referendum on Scottish independence. (John Boothman, ‘Liz Truss’s team mull bill to wreck indyref2 campaign’, *The Sunday Times*, 3 September 2022, <https://www.thetimes.co.uk/article/liz-trusss-team-mull-bill-to-wreck-indyref2-campaign-hhnbmjck>)

There are two major problems with Lord Frost’s approach. First, without qualifying his comments against Northern Ireland’s long-settled principle of consent, a perception could easily arise that he – and other Westminster influencers – either do not know or do not care (or both) about the constitutional legal framework of the UK as it applies to Northern Ireland. Second, by creating a woolly conceptual condition of “*a significant majority... over a decent period*” for constitutional change - in this instance relating mainly to Scotland - a real danger arises that a speculative discussion promoting the condition of a ‘super majority’ for constitutional change in Scotland could have a spill-over effect into the fractious nature of Northern Ireland’s politics that, deliberately or otherwise, serves to undermine the settled principle of majority voter consent.

If that risk is not confronted transparently and scotched decisively, not least by positive and progressive democrats in London and within Northern Ireland unionism generally, then its consequences for the 1998 Agreement and peace settlement could potentially become unforeseeable but undoubtedly deeply negative and destabilising.

PRECISION

This issue of precision being a core element of prudence also applies to many proponents of constitutional change. How else can informed consent precede the exercise of the principle of majority voting consent, unless citizens have clarity about the concepts being put to them? What do proponents practically mean, in the deepest and detailed terms, by blank promissory notes of a ‘new Ireland’? A ‘united Ireland’? A ‘shared Ireland’? The ‘end of partition’? Six years after Brexit, detail is a reasonable ask.

As highlighted, to date, a major gap in the broader public sphere is that those urgently proposing constitutional change have not yet proposed their own changes to the Constitutions. The concept is conveniently far enough away where ‘vision statements’ get traction but not yet close enough to require actual policy detail. Seeking to kick those kinds of drafting commitments for entirely new constitutional clauses and arrangements over to imprecise proposals for an all-Ireland citizens’ assembly without first specifying one’s own preferences would, at best, be an inadequate approach.

PARTNERSHIP AS PRIORITY

At all times in the evolution of the 1998 Agreement's constitutional peace settlement, an ethos of partnership was central to success, with leadership setting both tone and example: Albert Reynolds and John Major; Bertie Ahern and Tony Blair; Monica McWilliams and colleagues from all communities forming the Women's Coalition; Seamus Mallon and David Trimble after the Poyntzpass murders in 1998; Martin McGuinness and Peter Robinson after the Masserene barracks murders in 2009; Queen Elizabeth and President Mary McAleese during the monarch's state visit to Ireland in 2011.

RECONCILIATION

These visual and practical partnerships at key moments transcended the finer details of political divisions or differences, shifting the dial on the intrinsic character of reconciliation, revealing shared commitments to personal agency for greater good in building rapprochement. This is the key to reconciliation and partnership: ultimately they can only be created by courageous individual choices and proactive agency.

The concept of reconciliation, based on rights and respect, is at the very core of Northern Ireland's political settlement. The preamble to the Ireland-UK Treaty for implementing the 1998 Agreement states that the two governments reaffirm: *"...their commitment to the principles of partnership, equality and mutual respect and to the protection of civil, political, social, economic and cultural rights in their respective jurisdictions"*. The 1998 Agreement commits that all the participants will *"firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all... (and) are committed to partnership, equality and mutual respect as the basis of relationships within Northern Ireland, between North and South, and between these islands"*.

The main participants within the Northern Ireland Assembly have – especially in the divisive years since Brexit – failed to focus fully on these commitments. The 1998

Agreement's institutions have been increasingly weaponised over the past decade as dispensable tools to be exploited for ongoing party political leverage in attempting to revive a culture of ongoing managed 'crises' leading to constant negotiation of the type that was necessary during the 1990s.

PERSPECTIVE

'Crisis' disputes have ostensibly been about issues like the Irish language or the Ireland/Northern Ireland Protocol. An alternative perspective is that both issues could and should have been patiently and maturely settled within the parameters of The Executive Office in a way that maintained the stability of the local institutions.

Ulster's Presbyterians were the custodians of the Irish language in past generations and the pro-United Kingdom constituency would benefit from fulsomely taking ownership of language promotion thereby demonstrating an inclusive approach to power-sharing.

Those opposing Brexit would have benefitted from a more pragmatic position on the sticky implementation issues around the Protocol, but instead got entrapped by the complexity of influences and agendas in Europe, and localised inter-party rivalries.

Both of these sample issues rely for resolution upon a more mature sense of cooperation and communication, respect and reconciliation, and an attachment to genuinely practical partnership - exemplified by leadership - across Northern Ireland's political class. A perspective that places greater good over selfish interest is missing.

UNFINISHED BUSINESS

That's why, in October 2021, the lack of political leadership was so profoundly damaging to partnership and reconciliation – and arguably future constitutional evolution – around the ecumenical service in Armagh cathedral to mark the centenary of Northern Ireland's creation. The service was an opportunity for pro-united Ireland interests to extend substantial symbolic and moral generosity, but the opportunity was instead smothered by selfish republican considerations. At the time, this author addressed the controversy in the following terms in *The Irish News*:

“There's too much playacting at peace-making. Reconciliation needs our urgent, relentless attention. It's a lifetime journey – not an election cycle. Society properly focusses on big ticket news items like Brexit and borders. Similar

attention is needed to building relationships of respect and rights. And not through the rhetorical colonisation of words or ideas. (...)

Some controversy arose over next week's church service in Armagh and the non-attendance of President Higgins. In real terms, this was a bump in the road: a lack of nuance in organisation, not a lack of goodwill from any side. The bigger challenge is to reconstruct diplomatic channels that calmly avoid such situations from constantly becoming the new hill on which virtual battles are fought. Reconciliation won't happen at one prayer service. But nor will it be won through press statements. Reducing everything to a test of nationalistic loyalty is gravely counterproductive. Look at Brexit.

As with diplomacy, reconciliation needs more than just formulae of words. It pleads for spirit alongside substance: courageous actions that evidence our willingness to walk in worldviews which challenge our own particular experiences and perspectives. It's seen in quiet relationships emerging gently from mutual commitments for common good. It's the leadership of giving, without any guarantee of reciprocation. The act becomes the outcome. (Look at Tutu and Mandela's approach. And even then, deep societal wounds still persist.)

Reconciliation starts with the journey of fundamental personal change inside each of us – not others. No dictionary of words can surpass the wisdom gained by humbly engaging those who may still harbour unhealed hurts. Our politics has largely mislaid this essential ingredient that ended conflict and restored power-sharing in 2007.

Reconciliation isn't just a 'policy'. It's an essential personal philosophy for recovering communal human dignity that we, as a society, collectively devastated – through our actions or inactions – during two generations of appalling conflict.

That's why reconciliation and relationships, rights and respect, became visions at the Agreement's core. So too did the democratic institutions across these islands – including our local assembly and executive. The visions cannot be delivered without the institutions.

Our island has been transformed since 1998, but there is much unfinished business. Many people honourably yearn to sow the seeds of border referendum(s), but do so without ploughing the stony fields of reconciliation. The conundrum is that crops usually fail in hard ground. We owe the Agreement a duty of care – 'in all its parts.'" ('Much unfinished work on transformed island', The Irish News, 15 October 2021)

HONESTY

Honest leadership needs to be at the heart of building partnership because that is the only way to nurture the trust with others upon which true reconciliation can flourish. Unfortunately, our collective inability to openly reflect on our own shortcomings – both individually and institutionally – has become a barrier to such partnership.

This failure to build substantial (not just symbolic) partnership could undermine the potential of constitutional evolution. It also undersells the enormous genius of the 1998 Agreement's infrastructure which is – at this stage – the only viable, intrinsic compromise model for long-term constitutional evolution.

And yet reconciliation is also a journey, not a destination; and 25 years is still only a short period in history given the untold hurt that was caused by all aspects of conflict. Acts of human agency and generosity, imbued with honesty - not just truth, could transform that reality in a relatively short period.

It must now be fervently hoped that the recent participation of Irish republicans in the events to mark the death of Queen Elizabeth II marks a fundamental turning point and a return to the genuine embrace of reconciliation that the late monarch and the late deputy First Minister Martin McGuinness sought to establish through their increasingly warm rapprochement between their first meeting at the Lyric Theatre, Belfast in 2012 and and their final meeting at Crosby Moran Hall, London in 2016.

TECHNICAL

But partnership is not just the unfinished business of embedding and socialising the international and societal reconciliation ethos of the Agreement at a political level. It is ultimately also a technical political necessity between both governments for the sustainable management of all aspects of the Agreement's future.

While the *locus* for calling a border poll rests with the Secretary of State as the accountable public authority, the *de facto* requirements demand that a concurrent referendum would undoubtedly be required in Ireland with governmental agreement.

There may possibly be some actors who are speculating that Ireland should, in its own time, simply unilaterally invoke some kind of declarative or indicative poll about Irish unity - along the lines proposed by the current Scottish government - to place some pressure on the UK government to trigger the formal process for Northern Ireland.

Not only would that approach be legally backward in the prevailing constitutional framework: it would also be recklessly, politically destabilising in undermining the Agreement's ethos. The pathway ahead must be the careful reestablishment of relationships of partnership between both sovereign governments, especially at official and technical level.

INDIVIDUAL

At the level of individuals and communities, the commitment towards meaningful reconciliation must just as importantly be prioritised. We, as a society, have become stuck in divisive public and social media narratives after a conflict that devastated our collective dignity. These narratives are often being driven by the loudest voices and the slowest common denominators, cleverly pushing our emotional and historical buttons to ensure that control of their messages – and myths about the conflict, on all sides – do not get peeled apart. Genuine grace is often absent from the space of individual disagreement.

The real task today of anyone wishing to preserve the *status quo* is to demonstrate why my daughters, with their Irish names, Irish language, Irish culture, and Irish passports, should ever return from their working life in London to a society in Northern Ireland where their identity today is still not fully protected in law and where it can be disparaged with impunity by senior politicians in the devolved Executive government. Reconciliation must begin to mean more to their generation than just a slogan.

And the real task of anyone seeking to energetically promote Irish constitutional change is to explain to many young and socially mobilised Northern Ireland unionists - such as those identifying with a strong, historic Orange and loyalist band culture within their families and communities - why they should ever be trammelled into conversations which have only the predetermined destination of a 1916 Proclamation-style Ireland. That approach never can work. Reconciliation is not about just about trying to convince others to agree with you.

Ultimately, technical Treaty-based partnership between Ireland and the UK is going to be a prerequisite for managing any evolution to Northern Ireland's constitutional position. Leadership is needed at the very top of government and politics of a kind that has been missing in recent years. Reconciliation between people and communities is a personal commitment of action and agency that grows from the very bottom of our hearts. Partnership is a golden rule for the path ahead.

TWO STATES, ONE SYSTEM

Ireland's constitutional evolution is inevitable. At some stage in the next generation, it seems practically possible (at present) that the historical tide may shift the centre of gravity over sovereignty away from London and towards Dublin. Nothing is set in stone. But as this paper shows, any long-term destination will only be sustainable through approaches today that are grounded on patience, prudence and partnership around 'two states, one system', and the ongoing, indefinite maintenance of the 1998 Agreement's framework. The inviolable constitutional law is for simple majority voting consent, but the positive political desire must be reaching maximum societal consent.

MACHINERY

At some levels, there appears to be a complete lack of understanding of the machinery of government, and the processes of public and social reform that would be needed in terms of how future transformation could take place.

Northern Ireland is not Scotland, a nation that has the substantial socio-economic potential to stand alone immediately after secession from the UK. Nor is it Germany, which united its east and west parts after the complete collapse of the Soviet system resulted in an effective breakdown in all social order.

Northern Ireland is essentially unique in European constitutional terms because its sovereign secession from the UK would require its managed accession into Ireland. The complexity of this two-step concept could be practically challenging, and potentially overwhelming, for the already-strained public service infrastructure in both states on Ireland. Substantial reform of the Northern Ireland government and public sector is often pleadingly discussed, but without any serious political will to introduce the necessary transformative changes. These might include term-tenure limits on MLAs, Ministers, Special Advisors and key officials; a list system to introduce expertise into the chamber; reform of the Senior Civil Service; and a new small, representative upper house to challenge and scrutinise business, and counter-balance culture wars.

A complex but achievable model of constitutional evolution could involve the technical exchange of sovereignty over Northern Ireland from the UK monarchy to the Irish presidency whilst retaining the two states on Ireland with complete paraphernalia of the 1998 Agreement, and Dublin essentially reversing London's primacy on Strand One elements, including budgets, governance and political authority.

COMMONWEALTH

The necessity of equality considerations in symbolic and cultural allegiance, including flags, national anthems, and identity, begs for sensitivity about the future. Northern Ireland's ongoing membership of the Commonwealth could become a critical enabler. It's worth noting the South Africa model, where constitutional transformation was profound in 1994. The Republic of South Africa then rejoined the Commonwealth. The national anthem was designed in two sections, amalgamating the new with the old.

The possible model of Northern Ireland being within Ireland's sovereign political framework with the Irish president as head of state and inside the European Union, whilst also remaining fully within the Commonwealth - with the UK monarch as head of the Commonwealth - could well facilitate the practical realities of life for all citizens in the North. That may require sophisticated planning, but it seems conceptually feasible.

For example, sportspeople currently have the option of participating on a global stage at the Commonwealth Games for Northern Ireland whilst also participating at World and Olympic level for Ireland. Likewise, all-island sporting organisations, like Irish Rugby and the GAA, successfully manage across the 'two states' with 'one system' administrations while creatively transcending any notion of a divisive cultural border.

This kind of model could obviate the enormous practical consequences of seeking to maintain two hugely pressured public services frameworks North and South, while concurrently seeking to build an entirely new set of public services in parallel, requiring - as they would - vast additional start-up budget and human resources that have apparently not yet even been considered, never mind identified or quantified.

In that arrangement, symbolic questions of Ireland changing its flag, anthem, or attitude to the Commonwealth would not arise, although certain amendments would obviously be needed to the Irish Constitution. Such a model for the next phase of constitutional evolution could fall within the concept of 'two states, one system'; and be focused on long-term, managed public policy that is built around the lived realities of citizens rather than the simulated rhetoric of binary political discourse.

HEALTH

When people talk abstractly or academically about creating an all-island health system, the impression could be formed that all-island cooperation is not already well established. There is, in fact, considerable all-island cooperation in managing both elective and emergency health and social care. There is every reason to ensure that this continues and expands from the perspective of appropriate and successful patient care, and based on the efficiencies and effectiveness of economies of scale.

However, at a macro level, even the statistical and data collection models around healthcare are different. So, simply integrating the quantitative analysis of all-island health care, to inform transformative planning, will itself take huge resources, energy and an undefined lead-in period. Unity of purpose does not dictate unity of practice.

For example, at a regional and practical level, Northern Ireland's emergency service first responders - PSNI, NIFRS, NIAS, and rescue services - each historically operate within different emergency control rooms, despite the close operational cooperation between police, fire and ambulance personnel. This means that the respective IT systems are not aligned, albeit that 'work-a-rounds' can occasionally be devised for information sharing. Each service's emergency control system contains different personal information on the public when responding to emergency calls, with PSNI naturally holding additional security information that may be sensitive. The ideal and obvious scenario is for Northern Ireland's first responders to be housed in a centralised, collocated, purpose-built emergency control room (with a firewall for PSNI security data, and protocols for sharing). This is just one standalone example.

Such a project would require substantial scoping, programme development, planning permission, vast resourcing (running into tens of millions) and a parallel period of time where the new system and old system would attempt to merge and migrate, both the data and delivery. There would inevitably be significant snags in such a programme, which would require ongoing review and resourcing. The servicing of the new system would require several contracts with major IT and other providers which would need to run for at least five years consecutively, probably ten years, just to be viable.

QUESTIONS

Genuine, practical questions therefore arise. If the foregoing example is but one important element of transforming Northern Ireland's emergency first responder service for the public, what should happen between now and a possible border poll?

Should this kind of public service reform not even be considered any more? Should it be shelved because a border poll might theoretically require the entire process to be recommenced at an Irish national level involving many additional stakeholders and complications across Ireland at some future unspecified time? Or should it proceed now with the prospect that it could be redundant inside a generation?

There is no pause button in health and social care delivery, nor in any element of government service or public policy. Real life today cannot stand still when public services are being delivered under extreme pressure and when citizens – including public service workers – demand and deserve better. Yet, for example, it has taken the Northern Ireland Executive an entire decade to partially transpose good model Social Clauses in public procurement, incorporated in its Regional Stadia Programme in 2012, into government-wide policy in 2022 to begin paying a Living Wage from public funds.

How then is the constitutional transformation at a national scale to be achieved given that similar strands, issues, projects and plans would need to be multiplied by many thousands across the rest of the public sector, and affecting hundreds of touchpoint issues in every citizen's daily life, without diminishing current delivery and capacity?

Does the development of political or academic exploration around constitutional concepts even begin to absorb the experiential expertise of public policy practitioners within government, North and South, on such questions; and the realities of scale in the challenges already faced in trying to deliver basic social transformation today?

PHILOSOPHY

'Two states, one system' should be the philosophy for the next focused period of Ireland's journey. The 1998 Agreement should be the basis for national development, with the principle of majority voting consent in constitutional law protected inviolate.

A new Treaty-based management framework between the Ireland and UK governments should be agreed in the medium term, paralleled by a patient phase of diligent and constructive engagement across interested social, political and economic stakeholders. This should also inform the approach towards any possible referendum.

The bilateral 'two states, one system' Ireland-UK intergovernmental Treaty should become the 'living' vehicle by which fuller communal understandings of these critical concepts are explored with the objective of achieving maximum societal consensus, in ways that seek neither to undermine nor threaten any citizen's personal identity.

'Two states, one system' should focus on developing a rubric of political discourse, concepts, and relationships within the existing constitutional framework of the 1998 Agreement, while beginning to structurally harness the inevitable discussions about possible future constitutional evolution regarding Northern Ireland's status.

The Northern Ireland Executive and Assembly (and related democratic institutions) should be involved, as appropriate, on a consultative basis by both sovereign governments in developing this approach. The outdated 1990s model of multi-party talks should be superseded, preferring instead to build a wider model of public input and participation, particularly including a major focus on maximising existing roles of constitutionally-mandated democratic institutions. This requires Assembly reform.

Operating purposively within the 1998 Agreement, the approach would therefore illuminate issues of maximum joint administration (not joint authority) and joint systems (not joint sovereignty), between both sovereign governments, necessarily involving - where appropriate - the Northern Ireland Executive and Assembly, and the other institutional north-south and east-west elements of the 1998 Agreement.

NEXT DECADE

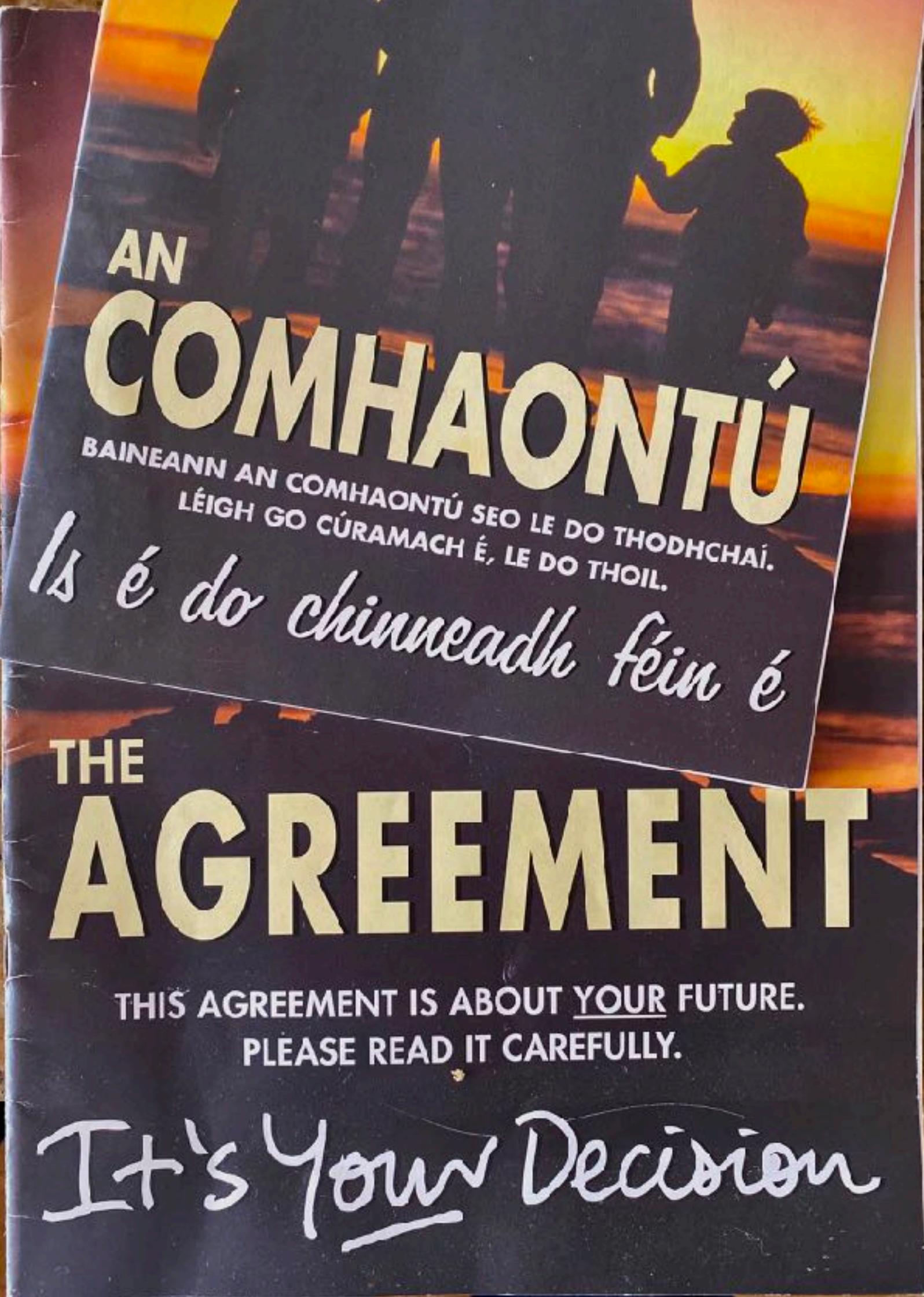
The next decade should be one in which the fallout from Brexit is faced collectively by encouraging the systematic enhancement of all-island policy cooperation across Ireland in practical and technical terms. Concurrently, harsh discourse and potentially destructive divisions about future constitutional outcomes should be moderated by all sides (whether or not the related instability is intentional) with a priority focus on ensuring that the basic delivery of public policy reforms can become exemplars of good practice by government in Northern Ireland and thereby positive indicators of what might be achieved in any new future arrangements.

'Two states, one system' should be strategically developed to become, *inter alia*, both a public discursive exercise and a detailed Treaty-based framework that promotes 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.

The ground rules should be prudence, patience and partnership around a 'two states, one system' philosophy across the island of Ireland in the time ahead. Reconciliation - internationally, institutionally and individually - must be at the core of this process.

Annex A – Summary of ‘Two States, One System’ discussion papers 2020/21

- A ‘two states, one system’ paradigm/narrative should be adopted by both sovereign governments for future Ireland-UK developments over the coming decade.
- The ‘two states, one system’ framework should be embodied in a new bilateral Ireland-UK Treaty agreed directly between both sovereign governments.
- The Treaty should form the basis of future relationships over the coming decade, and should frame the discursive context of these relationships across politics and society.
- Future constitutional discussions should be made conditional upon absolute institutional stability of the 1998 Agreement interlocked elements.
- The 1998 Agreement should be rigorously protected in institutional terms alongside being carefully enhanced in discursive terms, eg. around a gender-lens.
- Concepts that were ill-defined in the 1998 Agreement, such as ‘consent’ and ‘unity’ should be explored, elaborated and digested in considerable public detail – both north and south, beyond merely the simplistic headline understandings of technicalities or mathematics.
- The new Treaty should drive and expand the involvement and inclusion of wider society in governmentally-managed initiatives, which does not necessarily point towards only using existing formats of citizen assemblies.
- The Treaty should mandate and commission joint Ireland-UK longitudinal research and data collection by state statistical agencies and academic institutions to objectively inform the process of governmental cooperation. This should include research looking at the full panoply of opportunities, threats, risks and rewards in this deeply complex area of possible alignment across multiple areas of public policy and institutional reform – many of which are already highly dysfunctional in their existing *status quo*, never mind in considering the impact of any possible constitutional reform/rupture.
- The primacy of the 1998 Agreement’s political institutions should be strenuously maintained as the mechanisms for state political management, and the outdated 1990s model of multi-party talks should no longer be indulged.
- The post-Brexit equality and human rights protections of non-diminution negotiated by the UK Government with the EU, involving directly the Equality Commission for NI, the NI Human Rights Commission and IHREC in relation to the Ireland/NI Protocol and future cooperation, should be formally built in to the new bilateral Treaty.
- Open-ended timelines for progress around the consideration of any potential constitutional reform should be made formally conditional upon the ‘live’ context of society (inc. emerging data), and not the peremptory selection of random target dates.
- Referendums should be considered in a reversible format, so that the principle of calling a border poll continues to rest with the sovereign government holding jurisdiction over Northern Ireland at any future date using the ongoing mechanisms of the ‘two states, one system’ Treaty. While this may ultimately be a moot point, it may embed a measure of reassurance to the process of consideration and aligns directly with the principles of the 1998 Agreement as Northern Ireland’s peace settlement.
- There should be intergovernmental agreement on the necessity of a confirmatory referendum (after any initial referendum on the principle) about the final terms of any possible constitutional change given the timelines involved, and the experience of election cycles upon the development and outcomes of Brexit negotiations.
- Key areas such as National Security, intelligence and policing cooperation should be made exemplars of developing an accountable ‘two states, one system’ approach between both sovereign governments, alongside existing policy areas that would benefit from ‘one system’ policy focus such as health, infrastructure and the economy.
- Those who are proposing urgent constitutional change should be strongly encouraged to specifically state - for wider public consideration - their proposed, detailed changes to the Constitution(s), (to bring such proposals from the abstract into the actualité).



AN
COMHAONTÚ

BAINÉANN AN COMHAONTÚ SEO LE DO THODHCHAI.
LÉIGH GO CÚRAMACH É, LE DO THOIL.

Is é do chinneadh féin é

THE
AGREEMENT

THIS AGREEMENT IS ABOUT YOUR FUTURE.
PLEASE READ IT CAREFULLY.

It's your Decision