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## Much Brexit debate is based on misconceptions of the Good Friday Agreement says High Court judge

The Good Friday Agreement has been central to Brexit discussions in Ireland, its implications hotly debated, its viability even called into question. But not only are the language and intent of the agreement unambiguous, they offer solutions for a way forward, argues Richard Humphreys

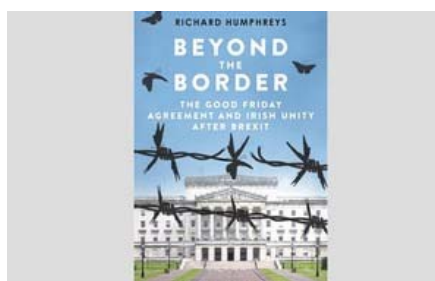


*Mr Justice Richard Humphreys – 'there is no end date for the Good Friday Agreement'*

**Richard Humphreys**

09 August, 2018 01:00

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*Beyond The Border, the new book  
by Richard Humphreys*

THE Good Friday Agreement remains worth celebrating 20 years on, because despite all of the difficulties in implementation, it has not been bettered as a roadmap for future co-operation.

The agreement ambitiously sought not just to provide for the governance of Northern Ireland but to settle its ultimate constitutional dilemma, providing a clear route map to Irish unity if a majority so wished.

But over time the clear language and lessons of the agreement have been overlooked. It is timely to come back to the wording of the agreement to dispel some of the misconceptions that have grown up.

One area of misunderstanding is in relation to language rights. These are not an optional extra. The agreement spells out in emphatic language the principle of equality of rights between the two traditions. That cannot be given meaning without some form of legal recognition of the Irish language.

For example, an Act of 1737 still on the statute book prohibits the use of any language other than English in the courts of Northern Ireland. How can that be reconciled with the clear commitment of the agreement to equality of rights?

A second area of misunderstanding relates to dealing with a breakdown in devolution.

When Stormont fell, some nationalist voices called for joint authority. But under the agreement, the fall-back to devolution is not joint authority - it is UK rule, albeit with Irish input through the Intergovernmental Conference. But Westminster retains full sovereignty and entitlement to legislate for the six counties.

Some unionists reacted by arguing that the Intergovernmental Conference should not meet. But the agreement requires that it can - indeed must - act when devolution fails.

And contrary to some unionist comments, the conference is perfectly entitled to discuss internal Northern Irish matters in the absence of devolved institutions.

However, much depends on the willingness of the two governments to operate the agreement. The long delay on the British side in agreeing to convene the conference at political level, together with the low-key, low-energy atmosphere of its most recent meeting last month, may not bode well.

It certainly contrasts strongly with the very emphatic programme of meetings of the conference during a previous suspension a decade ago.

But it is in the area of eventual possible Irish unity that the most distorted misunderstandings of the agreement have arisen.

Contrary to view of a number of commentators, the articulation of support for a united Kingdom or a united Ireland is perfectly legitimate. Debating the issue is not oppressing one side or another. Whether it is a good idea or a bad idea can be left to political debate.

Some academic opinion has argued for repartition in the face of an emerging nationality majority. That would be a fundamental violation of the agreement. The principle of consent does not mean the consent of any new sliver of the people located behind a freshly gerrymandered border.

Contrary to some loyalist proposals, raising the threshold for unity – for example to a supermajority – is ruled out. The test for unity is 50 per cent plus one of those present and validly voting in a poll in Northern Ireland, subject to similar consent in the south.

That does not mean that 50 per cent plus one for unity would be a great situation. Obviously if there is change, the more broadly based the support the better. But legally, a simple majority is sufficient, because a simple majority to stay in the UK would also be sufficient. Unionism is not a superior position to nationalism, so the test must be reciprocal.

For the same reason, there is no principle of unionist consent to a united Ireland, because there is no principle requiring nationalist consent to a united Kingdom. That does not mean unionist sentiment can be ignored – far from it. The agreement commits all sides to recognising equality of rights for both traditions.

The requirement of a simple majority is not a sectarian headcount or crude tribal majoritarianism because it is a reciprocal tie-breaker for the ultimate constitutional issue which is balanced by counter-majoritarian protections on all other issues.

And perhaps most challenging of all, there is no end-date for the Good Friday Agreement. That means that the Stormont institutions are not transitional but are permanent features of the constitutional landscape. They would remain in place even in the event of a united Ireland.

Thus the agreement promotes an inclusive version of Irish unity. Very little would change on the ground if a majority for unity emerged. MPs would go to Dublin as TDs rather than Westminster, but beyond that the day-to-day governance of Northern Ireland would

continue to be at local level.

Maybe if the agreement can be fully implemented and parity of rights fully appreciated, the ultimate constitutional disagreement can be worked through in a less threatening and less confrontational way.

**:: Richard Humphreys is a judge of the High Court of Ireland. His latest book, *Beyond the Border: The Good Friday Agreement and Irish Unity after Brexit* is out now, published by Merrion Press.**

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