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I'm writing to respond to Etain Tannam's recent posting on British-Irish institutional cooperation during a border poll (Tannam, 2020).

of Ireland (Rankin, 2009). The notion of majority consent for change to the constitutional status of the north was implied in the Government of Ireland Act 1920, the 1921 Treaty and the Ireland Act 1949. It appeared in incipient form in many constitution-related documents over the next two decades. It was made explicit in a series of constitutional initiatives in 1973, in much the same language as appears in the GFA.

Majority consent has been the linchpin of constitutional

Tannam is incorrect

I disagree. It's highly unlikely that unionism will warm to the B-IIGC. On the face of it, Tannam's

prompts is necessarily speculative, because the Secretary of State has infinitely wide latitude in considering evidence of majority support (see note 3).

Given that latitude, I suppose there is some small possibility that the Secretary of State could hold that the lack of majority support in the south somehow nullifies evidence of majority support in the north. But this kind of reasoning would surely violate the McCord ruling's stipulation that the Secretary of State "must honestly reflect on the evidence available" (NIQB 106, 2018, para. 20).

[3] That it's impossible to know how or when the Secretary of State's mandatory duty comes into effect surely complicates matters. We don't know what kind of evidence would make the Secretary of State believe that majority support for a united Ireland is likely and thereby trigger the holding of a border poll. As the McCord ruling emphasized, it's completely up to the Secretary of State to determine what kind of evidence to consider, how to weigh that evidence, and how the importance of evidence might change in a very fluid situation. And the Secretary of State is under no obligation to specify any of the elements of the decision-making process. The conceptually clear notion of a northern majority as a condition of constitutional change becomes irrevocably ambiguous when tied to this legal but mystical capacity of the Secretary of State.

We need to ask how a duty could be "mandatory" when no one can know the real circumstances in which the Secretary of State would be compelled to act by calling a border poll. In the body of the posting, I am, by necessity, speaking hypothetically, as if it is possible to know that the Secretary of State believes the majority-support condition has been met. I do this to point out the problems in Tannam's logic about Dublin's role in the calling of a border poll.

There are also important questions to be asked about what might happen should a northern border poll reveal majority support for a united Ireland. I have serious doubts that the British government would move to implement Irish unity if there were significant unionist opposition to the results of the poll. The same could be said about the Irish government after a southern poll. When legality clashes with expedience, the law often loses.

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