PROJECT MUSE®

Thinking Seriously about Irish Unity: A Response to ‘Let
“The People” Decide: Reflections on Constitutional
Change and “Concurrent Consent”’ by Colin Harvey

Colm O'Cinneide

Irish Studies in International Affairs, Volume 32, Number 2, Analysing
and Researching Ireland, North and South 2021, pp. 409-412 (Article)

Published by Royal Irish Academy

DOI: <https://doi.org/10.1353/isia.2021.0002>

➔ *For additional information about this article*

<https://muse.jhu.edu/article/810101/summary>

Thinking Seriously about Irish Unity

A RESPONSE TO ‘LET “THE PEOPLE” DECIDE:
REFLECTIONS ON CONSTITUTIONAL CHANGE AND
“CONCURRENT CONSENT”’ BY COLIN HARVEY

Colm O’Cinneide

Faculty of Laws, UCL

Since 1921, the topic of Irish unity has generated plenty of heat—but little light. Nationalists like to affirm their faith in the desirability and inevitability of unification, while unionists frame it as an existentialist threat. Either way, whether viewed as a dream or nightmare, unification has remained a vague, abstract and ill-defined concept. In particular, there has been little if any serious discussion of (i) what the constitutional structure of a united Irish state might look like; (ii) what policies, principles and symbols might help glue it together; or (iii) how unity might feasibly be achieved, despite the political divides of contemporary Irish society (north and south).

As a result, endless rhetoric about Irish unification has led to little if any serious debate about how it might work in practice. However, this situation

Author’s e-mail: c.o’cinneide@ucl.ac.uk
doi: <https://doi.org/10.3318/isia.2021.32b.40>

Irish Studies in International Affairs, Vol. 32, Issue 2, 409–412, *Analysing and Researching Ireland, North and South* © 2021 The Author(s). This is an open access article licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

has recently begun to change. As Colin Harvey points out in his incisive and powerfully-argued paper, people are suddenly talking about unification: '[w]hat once seemed romantic and aspirational, now appears realistic and feasible'.

As Harvey explores in detail, this shift reflects the impact of Brexit. Prior to 2016, the 1998 Good Friday Agreement had provided a constitutional safe harbour for Northern Ireland. Its provisions made it possible for day-to-day political tensions to play out on the level of devolved politics, while below a deeper stability prevailed—with divisive issues like unification being effectively relegated to the margins of debate.¹ But, now, as Harvey notes, this stability has been disrupted. Core constitutional issues have returned to the heart of political debates in Northern Ireland. For all its vagueness as a concept, Irish unity has become relevant again, because it holds out the prospect of recovered EU membership and an exit from the UK—at a time when demographic changes and shifts in political support have weakened the strength of popular attachment to the Union.²

This does not mean that Irish unity is imminent. The 1998 Agreement as implemented in UK and Irish law imposes certain constraints on how unification can come about. As set out in careful detail in Harvey's paper, and also analysed by the recently published report of the UCL Constitution Unit Working Group on Unification Referendums on the Island of Ireland, unification can only happen if it attracts majority support in two 'concurrent' referendums taking place north and south of the border, with a decisive 'yes/no' choice being put to both electorates. In addition, the secretary of state for Northern Ireland, who plays a key political role in this process, is only obliged to call a referendum if 'it appears likely to him that a majority of those voting' would express support for unification.³ Given how divisive a unification referendum will inevitably be, and the ensuing risk of violence, a secretary of state will presumably only be prepared to hold a referendum if polls show the existence of a clear, consistent and persisting

¹ Polling evidence from 2007 onwards suggests that nationalists and Catholics living in Northern Ireland had increasingly positive attitudes towards the UK with the devolved Belfast Agreement institutions in place, as opposed to the prospect of a united Ireland. See Northern Ireland Life and Times Survey, available at: <https://www.ark.ac.uk/nilt/results/polatt.html#conpref> (28 June 2021).

² See Paul Nolan, 'Running Out of Road', *Dublin Review of Books*, June 2021, <https://drb.ie/articles/running-out-of-road/> (3 July 2021).

³ Schedule 1 of the Northern Ireland Act 1998.

pro-unity majority—unless a decision is taken to engage in some form of reckless, high-risk political manoeuvring.⁴

As such, unification is only going to become a serious political possibility when sizeable chunks of the Northern Irish electorate become converted to its merits—enough to generate a stable and established majority in support of a decisive pro-unification vote. As noted by the report of the UCL Working Group, such a situation clearly does not exist at present: '[t]he evidence is that a majority in Northern Ireland would currently support maintaining the Union'.⁵

However, this does not mean that discussion of unification should be endlessly deferred until such a majority spontaneously comes into being. As Colin Harvey rightly argues, unification represents a possible constitutional future for Northern Ireland and the island of Ireland more generally—and should be treated as such in political debate, north and south. This means that serious attention needs to be given to what unification might mean in practice, both as a political process and a constitutional end state. And this is a conversation that both supporters and opponents of Irish unification should be prepared to engage in—even if their aims and objectives in so doing may differ.⁶

In this regard, as Harvey again notes, it is encouraging that some serious discussion has started in certain political, policy and academic circles about unification. This has particularly been the case in the republic—where the concept of Irish unity has historically attracted little more than pious, unthinking veneration. Leo Varadkar TD has recognised that an entirely new constitution may be required.⁷ Jim O'Callaghan TD has advocated a form of constitutional confederalism—with Cabinet seats being automatically reserved for unionist politicians.⁸

⁴ The objection could be made here that the relevant provisions of the Agreement and the Northern Ireland Act 1998 impose no obligation for a majority to be 'stable' or 'persisting'. But a glance at recent shifting polls in Scotland on the independence issue show how difficult it can be to point to the existence of a 'likely' majority—and courts will inevitably be slow to review a decision by the secretary of state that involves a judgement call about political conditions: see UCL Constitution Unit Working Group on Unification Referendums on the Island of Ireland, *Final Report*, paras 8.32–8.111.

⁵ UCL Working Group, paras 1.15, 3.40–3.48.

⁶ For supporters of unification, this would represent an opportunity to give substance and definition to what currently remains an inchoate concept, and to assuage unionist concerns in so doing. For opponents, it represents an opportunity to point out possible contradictions and blind-spots in the idea of unification, and to highlight some of the potential comparative advantages of Northern Ireland remaining in the UK.

⁷ Pat Leahy, 'Leo Varadkar believes Irish unification "can happen in my lifetime"', *Irish Times*, 15 June 2021.

⁸ Jim O'Callaghan TD, 'The political, economic and legal consequences of Irish reunification', 23 March 2021, delivered at Sidney Sussex College, Cambridge, available at: <https://jimocallaghan.com/the-political-economic-and-legal-consequences-of-irish-reunification/> (3 July 2021).

Such interventions are interesting, and important. However, they are only a beginning. Giving substance and definition to the idea of Irish unity is going to require plenty of hard thinking. To what degree should Northern Ireland retain a separate or distinct status within a unified Ireland? What role might the UK, or indeed the Crown, continue to play in a unified Ireland, as guarantor of the new settlement? What changes may need to be made to the institutional architecture of the existing Irish state? What new constitutional symbolism might be required? Would the first president of a united Ireland ideally be a leading Unionist politician? How would commemoration of the past be conducted, bearing in mind that recent opposition in Ireland to any form of state commemoration of the pre-independence Royal Irish Constabulary (RIC) will probably be unsustainable in a united Ireland? To what extent can or should the existing constitutional governance culture of Ireland be carried across to a unified state? What happens to the existing governance culture of Northern Ireland? What new forms of rights protection may have to be introduced? Should existing forms of social provision in Northern Ireland, such as free National Health Service (NHS) care, be constitutionally guaranteed in a unified state—and what implications might this have for social provision in the rest of Ireland? What process should be used to settle such issues, and who should get to participate in this process?

These are all complex questions. Answering them will be a challenge.⁹ Giving substance to the idea of a united Ireland is an inherently difficult task—not least because it may require radical changes to be made to the forms and traditions of constitutional governance in the republic, an aspect of unification that has often been overlooked. It also requires that serious thought be given to accommodating and engaging unionist perspectives. All of which makes Colin Harvey's contribution to these debates timely, welcome and challenging—and confirms he is right in emphasising the need to start thinking seriously now about unification.

⁹ See further David Kenny *et al.*, 'The constitutional politics of a united Ireland', in Oran Doyle, Aileen McHarg and Jo Murkens (eds), *Constitutions under pressure: the Brexit challenge for Ireland and the UK* (Cambridge, 2021), forthcoming.