

IRISH REFERENDUMS PROJECT

Irish unity can only be objectively examined as one of two options for Ireland's future, argues Brian Walker.

Political tremor not earthquake

Sinn Féin's spectacular success in the Republic's election jolts Irish unity into greater prominence. It places a party still controlled by a secretive group which includes old IRA bosses into leadership roles north and south, uniquely positioning them to influence developments on both sides of the border. Their continuing paramilitary affiliation was reason enough for the traditional parties of government to blackball them as less than democrats. But it was Fianna Fáil and Fine Gael who were humiliated by record numbers of voters consigning the IRA to history.

Sinn Féin's rise injects new anxiety into a situation not lacking in tension already. The tangible results will take time to emerge. In or out of government, Sinn Féin will insist that the Republic works actively for unity instead of treating the constitutional future as basically a northern problem to which the south will in time have to respond. As a first step, putting the establishment on notice to begin "preparing for unity" can be justified easily enough because almost nothing has been done.

Paradoxically greater power or influence will require Sinn Féin to moderate their rhetoric and discover where reality lies. The latest attempt to reset the political system on a right-left axis is underway and may turn out to be more enduring than its predecessors. Unity will not head the priorities of the Republic's next government. Rather than concentrating on party advantage in a war of words, émust adopt the voters' priorities to satisfy the huge expectations their win has created, over pensions reform, soaring housing costs and health service delivery. Pollsters and politicians will scramble to measure the true appetite for unity after long confinement as a pious aspiration. Although the thread of unresolved unity runs through the history of the state's first century, there is nothing like the well drilled cohorts of support for unity in the Republic as there is for independence in Scotland.

For northern nationalists the issue is more urgent and even personal. Can they support a border poll without threatening the fragile stability of the recently restored Assembly? (One way which we will come to later is to continue the Assembly in a united Ireland). A border poll may be called by the Secretary of State "if at any time it appears likely to him that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom." Pressure will mount to lift the veil of secrecy over how that decision would be reached.

In the Republic Micheál Martin, Sinn Féin's most persistent critic during the election is the current favourite for Taoiseach. As the results came in he was being pressed by elements in his party to share power with them. His record suggests he will not be stampeded into speeding up the pace. For within the moderate nationalist consensus, the emphasis is on reconciliation rather than absorption. Unionism is no longer a false consciousness. Unionist rights are accorded parity of esteem with nationalism. But revisionism has its limits. Sinn Féin will throw down the challenge: does unity then proceed at the unionists' pace?

Referendums and the numbers game

What is a referendum for? The question nags and the answer is by no means straightforward. Is it to register the settled will of the people in favour of a decision already broadly taken; or to impose a majority verdict on a reluctant minority for the perceived greater good? How is respect for the result to be secured if opinion is narrowly split? With all their experience of referendums on both sides of the Irish Sea, team members will have the question at the forefront of their minds.

In Ireland the question is complicated by two referendums which are complementary but distinct. A prime purpose of this project is to explain how the processes might best be coordinated. The bigger question is whether recommendations can be robust enough to stand the test of time in the volatile state of politics in both jurisdictions.

In the North a numbers game will be played out with mounting intensity, presenting quite a challenge for dispassionate public debate. Fresh ammunition will be provided in the census of 2021, the year which happens to mark Northern Ireland's centenary as a state. Conventional wisdom has it that a border poll is more likely than ever, if not inevitable. The assumption is made that a poll would not be called unless there was confidence in a unity result. This is more doubtful as the trend is ambiguous. Because of the sharp rise in the number of "others" who do not define as either Catholics or Protestants or unionists or nationalists, Catholics may become the largest grouping without reaching 50%. This is as much to do with a decline of religion as a signifier of identity. The long term trend is of levelling out, with Catholics slightly ahead.

Reverting to political identity, so far the combined nationalist vote has yet to exceed 42%, a figure not reached since 2001. Although the unionist bloc lost its overall majority in the 2017 Assembly election, a headcount of the pro-Union majority would show it comfortably ahead, probably although not certainly. The project should aim to provide the public with something better than the numbers game.

Political volatility could disrupt the gradualness of the trend at any time. In the North, polling suggests that Brexit has made unity both more likely and more polarised. If the Assembly had not been restored in January, nationalist confidence in power sharing could quite quickly have defaulted to unity. So it's encouraging that the Assembly is confirmed as the focus of stability for both sides of the community. Its fragile cohesion will be tested in an election in two years' time, and then by mid decade by the vote on remaining within the single market. As only a simple majority is required it will pass even if every unionist votes against it on the 2017 Assembly figures. This unionists regard as a breach of the consent principle. Nevertheless, the DUP and Sinn Féin both claim they have learned the lesson delivered by the voters that their nirvanas can only be reached by making the Assembly work. Despite the obvious incompatibility, they're both right in the sense that the constitutional future can best be contemplated under stable conditions not yet guaranteed. But in ten year's time?

The people can think for themselves, independent of party

The trigger for unity referendums rests in the hands of the people of the North, unmediated by party. The main weapon lies in the South where the shape of a united country will mainly be determined. The habit of referendums in both parts of Ireland may have encouraged voters to break old voting patterns in elections. This is a topic well worth exploring. The remarkable Sinn Féin surge in the general election may be part of the same movement of opinion that delivered equal marriage and abortion in referendums. In the North nationalist voters joined unionists in giving Sinn Féin and the

DUP a thrashing for three years of Stormont standoff. In the South a few weeks later, record numbers defied the main parties' blackballing of Sinn Féin and rewarded them with the largest share of the vote. These results are striking evidence that voters in Ireland as elsewhere are choosing to vote with discrimination rather than along the old party lines, making the old sectarian predictions increasingly unreliable.

Proposals for the constitutional future

For a united Ireland

A united Ireland will not happen by elision. Belief in its inevitability is all very well, but strong incentives will be needed for a partly hostile and poorer north and assurances for an otherwise preoccupied south. Many perhaps most in the south would oppose a stampede for unity which would allow the northern tail to wag the southern dog. The dimensions of unity reach far beyond the definitions of binary referendum questions.

If they are serious about it, it is incumbent on the Republic to present a plan for unity which contains financial and other incentives to both parts of Ireland, reaching out for broad based consent. The unity offer should be developed as much as possible in public to allow all concerned to contribute. This would maximise the involvement of civil society and individual unionists. It is unrealistic to expect the unionist parties formally to respond unless a yes vote is returned in a border poll. The New Ireland Forum of 1982 is the rough model. This exercise requires a radically different approach from the elite hot house negotiations of the Good Friday and subsequent agreements.

The consultation process should be steered by an impartial body independent of government. The recommendations would eventually form the basis of draft proposals for the Oireachtas. Integration proposals should be taken forward regardless of the referendum result. The Assembly would doubtless debate the plan for unity but cross community consent would not be given for negotiations.

Reconciliation rather than triumphalism should be the watchword of the entire process up to any decision to call referendums. While the decision itself would be based on demographic assumptions, prospects for a stable outcome should be tested by polls looking for a swing in favour of unity from hitherto unionist supporters and "others." Others currently represent about 20% of voters.

The criteria for calling a border poll

Who decides? This will be no ivory tower exercise in a Whitehall office. Formally the preserve of the British government, it would be the subject of furious debate. Dublin will have to be squared and attempts made to avert a unionist boycott. In an atmosphere of mounting tension public opinion polls would be invoked, the most searching being along the lines of the NI Life and Times Survey which surveys degrees of commitment and objection. But opinion polls have a credibility problem. Following precedents elsewhere, the criterion with the best chance of commanding respect is the most transparent, an actual or near majority of those voting in a major election for parties committing to a border poll in their manifestoes, with the desired outcome of Irish unity within a prescribed time frame.

No second referendums

Two referendums in each jurisdiction are profoundly undesirable, one on the principle of unity, the second to approve the form of implementation. A second vote would only restage the battles of the first, with a high risk of utter confusion. The southern referendum would follow the border poll a short time later, necessarily contingent on the northern verdict. A comprehensive plan for unity would be put before the voters north and south in advance and an updated version of the GFA representing the status quo added for voters in the North.

A choice of futures

The project should approach the future governance of Ireland as an open question. The referendums should offer a choice of constitutional futures. The survival of the Assembly should be the factor common to both. A simple yes or no fails to reflect the real choice, unwittingly accepts a nationalist narrative, threatens essential mainstream unionist participation and limits the impact of the recommendations.

The structure of unity

While it is entirely appropriate for academics to consider different forms of unity, fortunately one is oven ready. The continuation of a devolved Northern Ireland within a united Ireland is the obvious model for at least the initial period of unity.

In other words, one country, two systems, the transfer of the north's sovereignty from the UK to Ireland, leaving the GFA institutions largely intact and introducing a West Lothian- type self denying ordinance on southern TDs against voting on northern devolved matters. This would be most readily understood by everybody. Most importantly it would give special recognition to unionists by guaranteeing them a role in government in a united Ireland. Assurances for the protection of British and unionist citizen rights would be written into the constitution. A debate should be held and rehearsed by the project on whether the Assembly now part of Irish devolution, should be entrenched in the constitution and whether the UK government should act as guarantor of the rights of British citizens and unionists. The whole package should be wrapped before the referendums to avoid the political disaster of two referendums particularly in Northern Ireland. The settlement could be reviewed years later in a different climate. Approval by an all-Ireland referendum would be appropriate for moving to a unitary state.

The structure and internal character of a united Ireland

Amending the constitutional and legal framework could be the easy bit. More daunting is devising a national plan for harmonisation and integration that describes the character of the unified state. To start with this project should produce the latest estimate of the cost of unity. The subvention from the UK would continue for a negotiated period. The taxation system, pensions and welfare would be harmonised, the currency would transfer to the euro and a choice made over time between the NHS and the Republic's state health insurance system. An international Marshall investment Plan heavily supported by the EU would be devised and special incentives created for transferring multinationals to the border region. Some capital city features would be decanted to Belfast and Armagh and a great deal of energy would be expended on arguing over the display of British national symbols. The plan for unity would be implemented over years. In outline form it would be ready for the referendum voters.

The transition

Before the referendums the Irish government would present a draft transition plan with an indicative timetable to the UK government and the Assembly to begin harmonisation under Irish sovereignty as soon as possible after the votes. The necessary legislation would be passed in both jurisdictions as soon as possible. Any further harmonising measures towards more unitary government should be deferred to a much later date and made subject to an all-Ireland referendum. The project would lay the foundations, scope the plans and suggest a framework for implementation.

Who runs the border poll?

The Electoral Commission sets the wording and the rules for conducting the referendum. The Secretary of State calls it, the Assembly is split and therefore uninvolved as an institution. Westminster legislation is required. Under what auspices is the border poll conducted? Who's in charge to organise and approve the background briefings based on the Republic's case in favour of unity as well as the arguments for the status quo? The UK government is pledged to rigorous impartiality in the administration of Northern Ireland and in the implementation of the result. Is the UK government and the rest of Parliament therefore barred for campaigning? It is surely inconceivable to expect governments and parliamentarians in both countries to remain silent. The project should devise rules of conduct for the campaign.

What therefore is the British interest?

Ever since the 2016 referendum campaign the Westminster based parties seem gripped by fatalism at the prospect of UK breakup. Perhaps this would change as the threat to the UK's survival draws nearer. Would a UK government take part in a border poll campaign, the Conservatives for the Union, Labour either neutral or in favour of Irish unity? Or Parliament as a whole adopt an agreed bipartisan position? The project needs to know. Irish self determination doesn't mean the UK has no interest. It's worth pointing out that Irish unity involves more than two parts of Ireland coming together; it means cutting the British link, a colossal development that has been fought over for centuries. There are several different nationalisms in these islands including English, but where is UK nationalism? Will the governments link a border poll to pressure for Indy Ref 2? Conceding the former without a struggle and resistance to the latter crumbles, runs the argument. The UK government is stonewalling. How do they intend to "save the precious Union" (or more appropriately, Unions?) or will they let it all go? Will Parliament split as Labour become persuaders for unity? Will each "nation" be considered separately or as part of a joint strategy? Are they already ditching Northern Ireland beginning with the front stop? Where stands GB public opinion? On the face of it the challenge from Scotland will come first. If it succeeds it's argued that the Union with Northern Ireland would instantly become unviable. This theme needs close examination.

Would the UK continue as the guarantor of British and unionist interests and rights in a united Ireland as the Republic guarantees nationalist rights under the GFA? Ireland might be reluctant to concede British re-entry into Irish internal affairs which they thought they had disposed of finally in 1937. But they might approve a new British-Irish agreement giving the UK a right of audience in a one country, two systems arrangement in view of the continued closeness of the relationship.

Opting for the status quo

The alternative to unity is a status quo that describes the ideal pattern of relationships between unionist and nationalist, north and south, the UK and the Republic. It guarantees rights and provides the machinery which naturally imposes collaboration in government on previously warring factions. After each breakdown they have been forced to return. No version of a united Ireland as yet produced achieves that. Unity however dressed up in warm words, can only mean victory for nationalism and in republican minds, for the “armed struggle.”

Have the institutions of the Good Friday Agreement lived up to their promise? In one sense all too well. They have been weaponised by the Assembly parties with nationalists emphasising rights denied and unionists claiming violations of the principle of consent. The British-Irish relationship has survived the Brexit freeze to impose terms on the parties to restore the Assembly. Three years of stand-off ended with the vindication of the institutions. New responsibilities are in prospect to help safeguard bilateral British-Irish and north-south interests once a new relationship is forged between UK and the EU. Arguably the institutions are needed more than ever. Why change them?

It is a fact of life that although the term will be avoided, Northern Ireland will come increasingly under British- Irish joint authority. That the relationship has survived the Brexit freeze is a tribute to its resilience and its relevance to the post-Brexit relationship. It is also in Dublin’s interest to support efforts to minimise trade and regulatory frictions between GB and NI. The question occurs: is the Assembly system the gateway to a united Ireland or its alternative?

The project should examine the robustness of GFA institutions post-Brexit as the alternative to unity for the benefit of unionists and nationalists alike, taking in the proposed arrangements for Northern Ireland’s special status in the single market and the implications, political and economic, of “the border in the Irish Sea”.

Namely.....

The scope of the – arguably increasing - guarantor role of the Irish government in the GFA after Brexit. Is it fully accepted by the UK? Does the Irish government have a GFA veto on direct rule?

The unionist interpretation of the consent principle. Could “a constitutional principle of the first order” be invoked to require a weighted majority in a border poll, in conformity with cross community consent in the Assembly?

Is a special rights regime needed for Northern Ireland? How is the gap to be filled after the UK’s withdrawal from the Charter of Fundamental Rights?

The implications of the UK government’s hints about striking a different balance between the courts, and the government and parliament, changes to the Human Rights Act and future access to the ECtHR, affecting Northern Ireland.

Is the UK government’s determination to end “vexatious prosecutions” against serving and former soldiers compatible with justice for victims - also a burning topic with the Conservative right that could seriously split the Assembly?

In relation to Northern Ireland’s special status in the single market, how effective will be the joint committee’s consultation mechanism to consult Northern Ireland and the Assembly’s role in approving its continuation by simple majority?

How might a UK guarantor role for British citizens' rights operate in a united Ireland?

Assess the possible impacts of the emerging post Brexit settlement on the governance of the whole island and relations between the UK and Ireland.

Whose state? Unionists in the political context

We focus more on unionists here because they are the most obvious obstacle to a united Ireland. We do not share the casual assumption that they are entirely to blame for the interruptions to power sharing. Nevertheless their morale is low, their posture is defensive, they feel the republican narrative of a justified armed struggle has prevailed over the unionist defence of democracy and the rule of law, and they bitterly resent it. But whose law and whose order? Unionists hark back to a state which has been replaced by a different entity. Justice is also devolved to Sinn Féin whose recognition of the state is pragmatic and whose concept of historical justice is based on equality between two contending parties. Unionists are unreconciled to this but lack a clear strategy for the future. But judging from the terms they accepted for the return of the Assembly, they are beginning to realise that the best hope for the survival of the Union lies in more generous compliance with the demands of equality and governing for the common good rather than communal advantage. A brief review of unionists' political behaviour should help explain their approach to the likelihood of a border poll.

Since 1998 Northern Ireland politics can be characterised as a zero sum game in which concessions to republican pressure in the name of equality and human rights are seen as unionist defeats. As by any measure there was an imbalance to redress, unionists were bound to be losers. This they failed to recognise. Where it did not end in deadlock, power sharing was power share-out or power carve up between the two rival main parties, with low regard for the common interest. A series of calamities since 2016 which would have tested any system ended badly for them, from the self inflicted wounds of the RHI scandal to the fate of the confidence and supply deal with the May government. Battles over equality under the law in dealing with the Troubles legacy and Irish cultural recognition contributed to the three years' suspension of the Assembly and a loss of confidence in the entire settlement. And yet calls for a border poll failed to resonate. Nationalist voters rejected Sinn Féin's call for a border poll as the alternative. Both the DUP and Sinn Féin took a thrashing from their voters in the general election of 2019 by ordering them to return to the Assembly. Whether the new found fragile cooperation will survive a new call for a border poll "in five years" – or whether this is just another republican probe - remains to be seen. Sinn Féin have to make up their minds whether to play it long term and work the system or gather support for a border poll in the wreckage of a fresh collapse they try to incite. Which one of these attitudes and voices becomes dominant in the coming weeks and months will be of interest. How Sinn Féin, in the light of their success, present and comport themselves to the unionist community will be a measurement of their maturity as a party aspiring to govern.

In turn the DUP have to stop falling for Sinn Féin's obvious plays for advantage. Rather than reacting to events the DUP have yet to demonstrate they can adjust to the new situation in which the fate of the Union is finally dependent on the good will of others. They registered but did not embrace the advice of former leader Peter Robinson to prepare for unity like "taking out insurance for a fire you hope won't happen" and accept a vote for unity as the democratic decision.

As a party the DUP are unlikely to take part in exploratory talks where unity is the presumed outcome. But conversations convened by an independent body on an open agenda in which unity is naturally included could be more inviting.

Unionists have been arguing that the simple majority for the border poll is inconsistent with the consociational principles characteristic of the rest of the GFA. But their challenges to the very majoritarian principle that once sustained unionist dominance have failed. The objections to the backstop as a breach of the consent principle and to a simple Assembly majority to approve the single market were simply ignored. The case for a weighted majority in the border poll is unlikely to fly; a departure from the usual 50% +1 would be denounced as a political fix. But unionists are unlikely to take their protests to extremes. They are all too aware that a boycott of the border poll would collapse their main platform, the Assembly.

The threat of protest amounting to violence from the loyalist fringe cannot be discounted. It would not be 1912, 1921 or 1972 all over again but it might serve to dishearten soft opinion in favour of unity in the south. People are wary of exchanging formerly disgruntled nationalists in a unionist Northern Ireland for alienated unionists in a united Ireland.

The Brexit factor

The influence of Brexit as a push factor for unity may be exaggerated. Unionists are learning to grasp the essentials and de-dramatise the front stop. Election to Westminster secures the Union; all the rest is side salad. Northern Ireland is no stranger to all sorts of hiatus between the two islands and on the border. Few realise that work permits for Northern Ireland were required under the Safeguarding of Employment Act for GB as well as the south from the mid 1940s until finally abolished in the 1980s. The NI parties are as one in attempting to mitigate the effects of a border in the Irish Sea and threats to the alignment of standards from the British government's wider ambitions for a free trade deal. Powerfully influenced by civil society, all parties are likely to continue common cause as advisers to the Northern Ireland protocol's management committee. Despite their level playing field concerns, any Irish government will seek to defend the North's real interests. They would have every reason to support trusted trader schemes and encourage EU-destined imports into the island of Ireland to divert from Belfast to Dublin. Brexit barely figured in the southern election campaign. If all goes well – a big if - Brexit could fade as a factor in the unity debate. However an unknown quality is the feeling among some unionists that Boris Johnson “betrayed us over the front stop. He has dismembered the Union already and we might as well go in with Dublin.”

On the project..

This project will probably face several competitors some of them partisan, most adopting a broad if not a detailed approach to Irish unity. Your strength lies in your impartiality, rigour and diversity of perspective stretching across three capitals. It should also fire your ambition to deliver a comprehensive and hopefully unanimous report as a collective enterprise, with everyone involved in all aspects of the inquiry, whether as originators or critics.

The project should not be limited to a purely institutional review. It should continually investigate and report shifting public opinion and the unfolding strategies of governments and political parties; keep a close watch on rivals and how they're progressing; and commission an opinion poll on the final recommendations.

And finally..

From the outside in particular, the logic of Irish unity seems compelling but in history determinism is a poor guide. The shock that greeted partition a century ago is compelling evidence of that. Today,

unity is an idea whose time has not yet come. Whatever is contemplated for the future should not be left to snapshots of ephemeral opinion taken on the wing. It deserves no less than the commitment of political parties in an election to trigger referendums of unity. A simple binary referendum in the North would fail to maximise the consent necessary to ensure stability. Looking at it today and whatever the trend, the outcome is sure to be marginal.

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