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Ireland, North and South

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Irish Studies in International Affairs, Volume 32, Number 2, 2021, pp. vii-xvii
(Article)

Published by Royal Irish Academy



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EDITORIAL

Introducing ARINS—Analysing and Researching Ireland, North and South:

Authoritative, independent and non-partisan analysis and research on
constitutional, institutional and policy options for Ireland,
north and south in a post-Brexit context

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The period since the UK decision to leave the European Union has seen a growing public debate on future constitutional options for the island of Ireland, north and south. There are strongly held views on whether this debate is necessary or useful at this time. However, given that public discourse has already begun on these issues, the questions they raise cannot be avoided. In Britain, there are similar discussions about the future of the UK itself, and about the meaning and nature of the Union, in Scotland especially.

There are equally pressing reasons to discuss north/south cooperation, reasons that have little to do with Brexit. In early 2020 the Northern Ireland and north/south institutions of the 1998 Belfast / Good Friday Agreement were restored after three years of suspension. The COVID-19 pandemic has cast a new spotlight on a critical dimension of all island cooperation. The

doi: <https://doi.org/10.3318/ISIA.2021.32b.15>

Irish Studies in International Affairs, Vol. 32, Issue 2, vii–xvii, *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.



functioning of the institutions, and the effectiveness of the Agreement more broadly—including how far it is succeeding in its objectives of reconciliation and mutual understanding—are subject to regular debate.

In looking to the future, there are many ‘known unknowns’. For example, although regarded by some as a crude measure, the continuing demographic change in Northern Ireland appears likely to increase support for a united Ireland, though opposition also remains firm. The implications of the post-Brexit realities for Northern Ireland may also contribute to this trend. This could create a situation acknowledged as a possibility in the Agreement, whereby the secretary of state for Northern Ireland would be required to direct the holding of a referendum on the constitutional position of Northern Ireland.

However, the speed, extent and outcome of any such trends are unpredictable. It is worth noting that an increased number of people in Northern Ireland voted for non-aligned parties in recent elections; the perspectives of this group on constitutional change are in flux and perhaps very context specific. Debate in the republic on the prospect of a united Ireland has been more limited; public concerns are unclear. The new Irish government has made clear its intention to focus on how to strengthen a ‘shared island’ as opposed to leading discussions on the case for a united Ireland. It is critical that we assess the desire of many to forego any discussion of potential unity, where even raising the issue may prove destabilising. Such a perspective is also of the moment.

Irrespective of how broader constitutional questions might develop, it is also essential to understand and assess the functioning of the Agreement, in terms of both its institutions and its strands of activity, and to explore whether and how these might be improved and developed, both in the short and the longer term. As part of this exercise, it will be important to map interdependencies and connections within and between Northern Ireland, Ireland and the United Kingdom. These interdependencies arise in many areas, including the political, economic, social and cultural, and in regard to security and justice.

At the moment, it is far from certain that a referendum on the constitutional position of Northern Ireland will be triggered by the secretary of state for Northern Ireland, let alone what its outcome would be. What can be widely agreed is that holding a referendum in the absence of prior research and informed debate on the constitutional and policy options and their consequences could be hugely problematic.

This is therefore an apt time to launch a project of evidence-based research and analysis on the most significant questions of policy and public debate relating to options for the future of the island of Ireland, north and south.

Research questions to be explored range from constitutional and institutional issues, to options for economic, fiscal and social policy, to the accommodation of diverse cultures, identities and symbolism, to the impact of climate and contagion on cooperation across jurisdictions. Relationships within Northern Ireland, across the island of Ireland and between Ireland and Britain will all need consideration in such research. And of course, there will be lessons to draw from international experience on all of these things.

Research on these matters is not intended to strengthen or weaken any particular conviction or aspiration, but rather to help create the conditions for better quality debate and decision-making. Regardless of their preferences, policymakers and the public in both jurisdictions should be well informed.

The Royal Irish Academy (RIA) is an all-island body, founded in 1785, which brings together leading scholars and researchers from across Ireland and overseas, and which already plays an active role in many areas of public policy. The RIA has now formed a partnership with the Keough-Naughton Institute for Irish Studies at the University of Notre Dame's Keough School of Global Affairs, which has a presence in Ireland and a long and distinguished record in Irish Studies. This partnership is to plan, support and communicate a wide-ranging programme of research. This research will be rigorous, non-partisan and independent, and will operate to the highest academic standards. We will commission and welcome research from a range of scholars in all relevant disciplines. In publishing and publicising that research we will seek to support respectful debate among politicians, within the media and civil society, and among the general public. We are open to dialogue with academic institutions, civil society and others to add further areas of study.

The research and publication plan involves commissioning and publishing full-length academic papers, on a regular basis through 2021 and beyond, in the RIA journal *Irish Studies in International Affairs* and as pamphlets and edited collections with the University of Notre Dame Press. To emphasise that the project does not have a collective view on the political or constitutional future, some of the articles we publish will come with responses—focused on broadening out the debate and encouraging other research. We will also often publish more than one article on a topic, again to emphasise the diverse voices in this debate and the need for different types of research.

We have grouped the initial programme of research into three broad areas, as detailed here.:

1. POLITICAL, CONSTITUTIONAL AND LEGAL ISSUES

In the broad areas of political context and on institutional and constitutional design, there are a number of key questions where insights from research, including research on other contexts, will be crucial. First, there is a need for a discussion on the conditions under which referendums on the constitutional status of Northern Ireland might be triggered, the preparation for such referendums and the implementation of their results. The British secretary of state for Northern Ireland has an absolute discretion to call a referendum at any time of their choosing and while it might be expected that the government of Ireland would be consulted, there is no legal obligation to do so, nor does the Good Friday Agreement require Irish government consent. The Good Friday Agreement and the relevant enacting legislation in the UK also state that the British secretary of state ‘shall exercise the powers [to call a border poll] if it appears likely to him that a majority of those voting would express a wish that NI would cease to be part of the UK and form part of a united Ireland’. In the Raymond McCord Court of Appeal judgement, the court ruled that this duty arises even if it is not in the public interest to direct the holding of a border poll.¹ There is therefore a clear need to create certainty about how such powers might be exercised in practice, who would have the right to vote and how referendums north and south would be organised, and what evidence a secretary of state might use to form their judgement. This will require a much more rigorous analysis of public opinion in Northern Ireland and the republic of Ireland, with a variety of research tools including opinion polls and focus groups. Almost all opinion polls are showing growing support for Irish unity among those self-identifying as Irish nationalists, the only uncertainty is its scale. There is both growth in support for a united Ireland and much higher levels of uncertainty, amongst the 15% to 20% of the population who do not self-identify as either nationalist or unionist.²

Beyond the referendum itself there is a need to consider the possibility that a majority would vote for a united Ireland and what the consequences of that majority vote would be. Currently, it is regarded as somewhat unlikely that unionist political leaders would engage in hypothetical negotiations before a border poll, so the precise political and constitutional future may only

¹ Read the Raymond McCord Court of Appeal judgement here: <https://judiciaryni.uk/sites/judiciary/files/decisions/Raymond%20McCord%E2%80%99s%20Application%20Border%20Poll.pdf> (8 January 2021).

² Lucid Talk Opinion Polls, December 2018, available at: https://docs.wixstatic.com/ugd/024943_b89b42d32364461298ba5fe7867d82e1.pdf and https://docs.wixstatic.com/ugd/024943_b195541bffa647a7882be133023ff803.pdf (8 January 2021).

be able to be finalised after a referendum result is known. However, an Irish government could set out some firm guarantees in advance and certainly the possible consequences of different constitutional models are best set out well before a referendum campaign. For example, what has been the comparative international experience of state unification/reunification including federal, confederal and unitary state models? Would a Northern Ireland Assembly and power-sharing executive be maintained in Northern Ireland as a region of a united Ireland, would power-sharing move to the national level, would devolution from Dublin to Belfast be introduced, or would political guarantees be best structured in other ways? Can we learn anything from other federal states about the likely consequences of each decision?

Beyond the institutions of government, what guarantees need to be in place on human rights, civil rights, respect for identities? How would a new Irish state respect and protect the varied identities of those who would have voted to maintain Northern Ireland's place in the UK? There is already a clear commitment in the Good Friday Agreement to support every individual's right to hold an Irish passport, a British passport or both, which would require some constitutional and political change, including for example the right, of citizens of a united Ireland holding British passports, to vote for the president and in constitutional referendums and so on.

At the level of public administration, if a referendum was carried, how would two systems of public administration be merged, or in a federal model work in parallel, including court systems, the policing systems and the militaries? How would the international relations of a new united Ireland change? It is widely and correctly assumed that there would be support from a very large majority to remain in the European Union, but would the British-Irish Council be enhanced to manage the varied relationships that would need support, would the new state join the Commonwealth and/or NATO? The implications of these decisions have not been discussed to any significant extent and more research and structured public dialogue is essential, both before and after a referendum.

2. ECONOMIC, FINANCIAL, SOCIAL AND ENVIRONMENTAL ISSUES

Beyond political and constitutional issues, there are a wide range of economic, financial, social and environmental issues, where further information and research is needed well in advance of any border poll. These include current

and historic economic performance north and south, the economic impact of Brexit and the potential for enhanced investment and economic growth. There is a considerable body of work to be completed on divergences and commonalities in social, economic and environmental policy, north and south. While some high-level examples such as the operation of the NHS in Northern Ireland and the higher level of pensions and welfare payments in the republic of Ireland are well known, carrying out more precise work on comparative health outcomes and even welfare payments may be very challenging, due to the different reporting systems and national statistics being used. One opinion poll has already highlighted the potential impact of the NHS on swing voters in Northern Ireland.³ Part of this discussion on future welfare models will be related to the size and content of the existing UK subvention to Northern Ireland and to potential changes in tax systems for both individual and corporations.

There is also a wide agenda of existing cooperation and interdependencies in the all-island economy and in the social and environmental sectors (including public, private and voluntary sectors); the implications of climate change for the island and for all-island cooperation. The COVID-19 crisis has shown the need for cross-border cooperation on public health on a small island and the challenges of doing so. The same is true for animal health, and biodiversity. There is a need for much more research on the impact of potential constitutional change (under various models) on the economy. And here the international experience again becomes important. What can we learn from international research on the impact of greater integration on the island, on common tax and regulatory frameworks and indeed on the short-term economic costs of disruption?

3. CULTURAL AND EDUCATIONAL ISSUES

In the cultural and educational arena, issues to be researched include how the diverse identities and traditions on the island are understood, felt, expressed and promoted, and how they are perceived and understood by those of other traditions. To what extent do people take part in or even watch

³ Suzanne Breen, 'Poll: NHS could be crucial in border poll with support for united Ireland and the Union running neck-and-neck', *Belfast Telegraph*, 25 October 2020. Available at: <https://www.belfasttelegraph.co.uk/news/northern-ireland/poll-nhs-could-be-crucial-in-border-poll-with-support-for-united-ireland-and-the-union-running-neck-and-neck-39666639.html> (8 January 2021).

cultural production (in its widest sense including sport) on a cross-border basis? How do the two different educational systems compare in terms of educational impacts and social inclusion? If a border poll saw a vote for unity, would existing schooling systems be maintained or merged and if merged how would that be done given the current structures of governance and ownership? How might cross-border cooperation enhance the provision of higher education in the north-west on a cross-border basis? What are the implications of constitutional change (under various models) for culture and education, particularly with a view to the protection of the diversity of identities and traditions on the island, and to the development of mutual understanding? Beyond the right to hold an Irish or British passport or both, set out in the Good Friday Agreement, what other guarantees, or potential changes in state symbols, or in the status of the Irish language might be required? How do we move beyond binary identities of Irish and British to guarantee the rights of others for whom neither of those binaries may be their primary identity, such as recent migrants to Northern Ireland?

This programme of research is launching with five papers and their individual responses. Brendan O’Leary of the University of Pennsylvania sets out the case that serious strategic planning should begin now for a possible referendum on Irish reunification and a possible vote in favor of it. He argues that clarity is required about the decision-rule in any referendum and that the existing simple majority rule should remain as set out in the Good Friday Agreement. O’Leary also argues that fundamental clarity is required on the model of a united Ireland, *or* on the process of constitutional reconstruction that will follow a reunification vote in the north, to ensure that voters in the Northern referendum are adequately informed and know what guarantees or power-sharing provisions would be built into the model of a united Ireland, or the design of a constitutional convention. Responses by Fionnuala Ní Aoláin, Professor of Law at the University of Minnesota, and by Christopher McCrudden, Professor of Law at Queen’s University Belfast, expand the constitutional and human rights discussions generated by this paper.

The second paper, by Jennifer Todd of University College Dublin, explores unionist concerns about Irish unity and asks what forms of Irish unity might accommodate those concerns. It also explores the concept of accommodation and the status of unionist fears—do they concern physical or ontological security? The article is concerned with paradigms of thought, the conditions of accommodation, respect and recognition, the nature and meaning of identity, as well as with the institutional and constitutional form of a possible fu-

ture united Ireland. It attempts to free a discursive space away from identity politics and to open a wider range of constitutional futures to negotiation and informed choice. Máire Braniff, political scientist at the University of Ulster, offers a considered response exploring the identity politics and rooted traditions of Northern Ireland and how these may shift and change.

The third paper, by former diplomat Rory Montgomery, explores the provisions of the Good Friday Agreement regarding the possibility of a border poll and a united Ireland. The bedrock of the Agreement, he argues, was an intricately interwoven and balanced set of principles, understandings and commitments regarding the constitutional status of Northern Ireland and in what manner that status could change, and a united Ireland be established. The Irish Constitution and relevant British legislation were amended correspondingly. While exploring what the Agreement says or implies about a future process of unification, the article concludes that, while some essential points are clearly defined, many of the key issues remain unspecified. Oran Doyle, Professor in Law at Trinity College Dublin, then considers the implications and constitutional issues surrounding a referendum on reunification, offering further important debate.

The fourth article published at the launch is by Deirdre Heenan of Ulster University, and it explores cross-border cooperation on health in Ireland, including the manner in which the two jurisdictions on the island dealt with the COVID-19 crisis, but also the challenges for analysis and system cooperation on an all-island basis. Meaningful collaboration and cooperation, Heenan argues, 'must be underpinned by a robust evidence base. What works and why?' Meaningful comparisons are hindered, she suggests, by 'a lack of comparable data, lack of structures to facilitate shared learning and political reluctance to engage in meaningful comparison'. Anne Matthews, Professor at the School of Nursing and Human Sciences responds to Heenan's arguments with an enlightening view of the pandemic and north-south health cooperation in Ireland.

The fifth paper published as part of the launch, from Adele Bergin and Seamus McGuinness of the ESRI (Economic & Social Research Institute), compares living standards in Northern Ireland and the republic. The paper finds that household disposable income was \$4,600 higher in RoI compared to NI in 2017, equating to a gap of approximately 12% after accounting for differences in prices across between both areas. General levels of earnings inequality are found to be broadly comparable in both areas, but tax and welfare transfers have a much larger impact on reducing the risk of household poverty in RoI.

They find that 8.9 percent of individuals are at risk of poverty in ROI compared to 14.3 percent in NI after taxes and transfers. The paper goes on to analyse other measures of welfare including educational disadvantage and life expectancy. They conclude by calling for a greater coordination between the statistical authorities in both regions to produce comparable metrics, across a range of areas. This paper is attended by a response from Professor John FitzGerald of the ESRI and Trinity College, exploring aspects of quality of life north and south that remain ripe for research.

These first articles will be followed by a series of research articles right through 2021 and beyond. In keeping with the ethos of the project it will publish articles with responses, and publish many full-length articles on some topics reflecting both diversity of views but also the scale of the work to be done. John Doyle (Dublin City University) will explore the Northern Ireland subvention, its scale and its relevance for planning about the future. Etain Tannam (Trinity College Dublin) analyses the crucial role of British Irish intergovernmental cooperation in managing this period of uncertainty. Just as the decision of the UK to leave the European Union was a trigger for a renewed debate on constitutional and political futures, the ongoing role and potential role of the EU will continue to be important. Katy Hayward (Queen's University Belfast) will explore the impacts of the negotiations between the UK and the EU on Northern Ireland. Mary C. Murphy (University College Cork) will analyse the potential interactions between constitutional change and European integration and the EU as an actor.

A number of different authors will explore the crucial issue of unionist and loyalist responses to the debate. Peter Shirlow (University of Liverpool) makes the case for focusing on the many interdependencies between Ireland and the UK. Separate articles from Duncan Morrow (Ulster University) and James McAuley (Huddersfield University) will analyse initial unionist and loyalist responses to the emerging debate on possible constitutional change and the debate within unionism as to whether they should engage with it. The question of inclusion in a new united Ireland and even on the debate before a referendum needs to be much broader than those who self-identify as unionist (itself a diverse group). Liam Kennedy (Queen's University Belfast) will discuss an ethical left perspective on Ireland's futures.

Jennifer Todd and Dawn Walsh (University College Dublin) with Joanne McEvoy (University of Aberdeen) will explore how we can incorporate multiple voices in constitutional debates—accessing the voices of the uncertain, the unasked and those with different agendas. There are those who will approach

the constitutional debate with questions that do not relate to national identity, but relate to more functional demands for equality around issues that may become marginalised. Very little research has been carried out to date on the views of recent migrants to Ireland, north or south, to constitutional change. Understanding the views and priorities of these diverse voices will be an important part of any research programme and public debate.

Designing a process by which a public debate can take place, and the rules that would govern any potential border poll are crucial questions. Jane Suiter (Dublin City University) will explore the lessons to be learned from the international experience of citizens' assemblies as a methodology to advance public discussion on challenging issues. Colin Harvey (Queen's University Belfast) discusses the management of a referendum process itself and the questions that need to be decided about how it would run.

Mapping the differences, similarities, strengths and weaknesses of two different public policy systems is a crucial component of any evidence-based planning for change, whether that change involves greater coordination, merger or divergence. Eileen Connolly (Dublin City University) will explore attitudes to gender and equality, including the impacts of the recent referendums in the republic on marriage equality and abortion rights. John FitzGerald (ESRI and Trinity College Dublin) will explore the comparative labour markets including skill and education levels and productivity. Ciara Fitzpatrick and Charles O'Sullivan (Ulster University) will conduct a comparative study of welfare rights and benefit levels. Anne Matthews (Dublin City University) will explore the comparative strengths and weaknesses of the two health systems and the new data required to advance that research. Mary P. Murphy (Maynooth University) will discuss challenges of cooperation, convergence and divergence between the two welfare state systems.

Cultural issues will also form a significant aspect of any debate. Brian Ó Conchubhair (University of Notre Dame) will analyse the possible implications for the Irish language. Eugene McNulty (Dublin City University) will examine how the border has re-emerged as a topic in literature and Pat Brereton (Dublin City University) will explore the treatment of the border, conflict and peace in film.

There is a very broad research agenda and many other research articles, beyond those already in train, will be required. The ARINS project will advance as many as possible, but also work with other groups and individual universities to deliver what is necessary. The recent interim report from the Working Group on Unification Referendums on the Island of Ireland, led by

University College London's Constitutional Unit, has addressed many of the issues around the referendum-related process and procedural issues.⁴ There are also civil society groups of a more activist nature already engaged in this debate such as Shared Ireland and Ireland Futures who are highlighting issues where further research is needed.⁵ While unionist political parties appear dis-comforted with this emerging debate, organic discussion of the issues is taking place at community level within unionism and some, including former DUP leader Peter Robinson, have called for more structured engagement.⁶

We recognise the sensitivities around the very process of conducting such research but believe that the need to ensure that all eventualities are anticipated and researched, and that the ensuing debate is informed and comprehensive, take primacy. The conduct of the Brexit referendum, in the absence of research-informed debate, highlights the need for this work to take place. The principals of the ARINS project believe that our endeavour can offer an authoritative, independent and non-partisan reference point for those seeking research and analysis about future constitutional, institutional and policy options for the island of Ireland.

⁴ Interim Report of the Working Group on Unification Referendums on the Island of Ireland, available at: <https://www.ucl.ac.uk/constitution-unit/research/elections-and-referendums/working-group-unification-referendums-island-ireland>

⁵ For example see the Twitter accounts <https://twitter.com/IrelandsFuture>; https://twitter.com/think__32; <https://twitter.com/UnityYes>; <https://twitter.com/SharedIreland> (8 January 2020).

⁶ See for example Peter Robinson's speech in June 2018, available at: <https://www.belfasttelegraph.co.uk/news/northern-ireland/peter-robinsons-queens-university-speech-full-text-36992405.html> and Alex Kane in the *Ulster Newsletter*, 17 February 2020, <https://www.newsletter.co.uk/news/opinion/columnists/alex-kane-border-poll-or-not-unionism-must-work-its-message-1742392> (8 January 2020).