



The political, economic and legal consequences of Irish reunification.

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I

I want to thank the Master and Fellows of Sidney Sussex College and, in particular, Professor Eugenio Biagini for inviting me to give this paper. It is a real pleasure for me to return to Sidney Sussex College, albeit remotely, having spent a number of very happy years in the college in the 1990s studying law as a postgraduate student. Sidney Sussex had very strong links with Ireland at that time and it was a Cambridge college that was particularly receptive to Irish graduates doing masters or doctorates in law. I know that the links between the college and Ireland continue to grow and I believe those links are strong evidence of the ongoing good relationship that exists between our two islands notwithstanding the troubled nature of our shared history.

The huge transformation that has occurred in Anglo-Irish relations in recent times is evident from a brief appraisal of the history of Sidney Sussex and the involvement it had with Ireland. This college was founded in 1596 through a bequest from Lady Frances Sidney, Countess of Sussex, for the establishment of an educational institution at Cambridge. Forty years earlier in 1556 Lady Frances accompanied her husband, Thomas Radcliffe, later Lord Fitzwalter, to Ireland on foot of his appointment by Queen Mary as Lord Deputy of Ireland. The Tudor conquest of Ireland is a difficult part of our shared history and poisoned the attitude of the majority of Irish people towards the British Crown for centuries. Relationships got even worse in the following century when another alumnus of Sidney Sussex, this time not representing the Crown but the Rump Parliament, landed on the shores of Ireland with his model army in August 1649 and unleashed a savage repression that is not widely understood in England but will never be forgotten in Ireland.

Fortunately, relationships between the two islands have improved immeasurably since those times. Part of the reason why there has been such an improvement is because of the ongoing educational interaction between students and scholars on the two islands.

This interaction, research and engagement provides a very understated and underestimated method of reconciliation and mutual understanding between our two islands. For instance, back in October 1959 the then Taoiseach, Sean Lemass, participated in a debate at the Oxford Union on the subject of the reunification of Ireland. He commenced his address by quoting the former British Prime Minister, H. H. Asquith, who had stated:

“Ireland is a nation; not two nations, but one nation. There are few cases in history, and as a student of history in a humble way, I myself know none, of a nationality at once so distinct, so persistent, and so assimilative as the Irish.”

I am aware that many people from outside Ireland listening to this paper will be unaware of Irish politics and may find it difficult to understand the political divisions that exist between different political parties in Ireland. I am a member (Teachta Dála) of the Irish parliament (Dáil Eireann) elected by the people in the constituency of Dublin Bay South as a representative of the Fianna Fáil party. Fianna Fáil is a republican party founded by Eamon De Valera in 1926, the primary aim of which is to secure the unity and independence of Ireland as a republic.

Although the links between Sidney Sussex College and Irish republicans are faint, it should be pointed out that I am not the first Fianna Fáil member of Dáil Eireann to study at this college. That distinction belongs to the late Brian Lenihan, a distinguished Minister for Finance and Minister for Justice, who was a student here in the 1980s.

I, like Brian and other representatives of Fianna Fáil, am an Irish republican. Irish republicanism traces its origins back to the united Irishmen of the late 18th century and, although it was overshadowed in the 19th century by Irish nationalism, it became the dominant political position of the Irish people in the aftermath of the 1916 Rising, as is evident from the success of republicans in the 1918 election where they secured 73 of the 105 Irish seats. Fianna Fáil is the political party that grew out of those republicans who rejected the Treaty of 1921 because it did not secure the republic as established in 1918.

The maintenance of the oath to the British monarch rather than opposition to the partition of Ireland was the main reason why many republicans opposed the Treaty.

Unlike certain other republican parties, we in Fianna Fáil have always been committed to exclusively peaceful means in order to achieve our cherished aim. That aim is to see our country and its peoples peaceful, prosperous and united. I am speaking to you today because the achievement of our aim now appears to be a realistic prospect – and therefore because it is incumbent on us to set out how that aim can be achieved and implemented.

I should also explain the following point of constitutional law. Geographically, the name “Ireland” describes a single island. Constitutionally, the name “Ireland” describes the state made up of the 26 southern and north-western counties of that island. When I refer to “Ireland” as a state I am referring to the present 26-county state. “Northern Ireland” describes the 6 north-eastern counties of the island that comprise the partially autonomous region that is geographically part of Ireland but constitutionally part of the United Kingdom.

II

This June marks the centenary of the opening of the Northern Ireland Parliament by King George V. It is a very significant centenary that is cherished by many people in Northern Ireland. It is viewed in a different light by those of us who aspire to a united Ireland. It is not the function of this paper to appraise Northern Ireland or indeed Ireland since their establishment. However, it is worthwhile recalling what George V said on that historic occasion:

“The eyes of the whole Empire are on Ireland to-day, that Empire in which so many nations and races have come together in spite of ancient feuds, and in which new nations have come to birth within the lifetime of the youngest in this Hall.

I am emboldened by that thought to look beyond the sorrow and the anxiety which have clouded of late my vision of Irish affairs. I speak from a full heart when I pray that my coming to Ireland to-day may prove to be the first step towards an end of strife amongst her people, whatever their race or creed. In that hope, I appeal to all Irishmen to pause, to stretch out the hand of forbearance and conciliation, to forgive and to forget, and to join in making for the land which they love a new era of peace, contentment, and goodwill.

It is my earnest desire that in Southern Ireland, too, there may ere long take place a parallel to what is now passing in this Hall; that there a similar occasion may present itself and a similar ceremony be performed. For this the Parliament of the United Kingdom has in the fullest measure provided the powers; for this the Parliament of Ulster is pointing the way. The future lies in the hands of my Irish people themselves.

May this historic gathering be the prelude of a day in which the Irish people, North and South, under one Parliament or two, as those Parliaments may themselves decide, shall work together in common love for Ireland upon the sure foundations of mutual justice and respect.”

His wish to see an end of strife amongst Irish people was not realised during his lifetime. In fact, it took another 77 years, during which time discrimination, strife, sectarianism and violence prospered, until politicians succeeded in pacifying the violent divisions between the different traditions that had led to partition.

That success was manifested by the historic achievement in 1998 of the British and Irish governments, with the assistance of President Clinton, in securing agreement between the parties in Northern Ireland and between the two governments.

The British Labour party now recognises the Belfast/Good Friday Agreement (“the Agreement”) as one of its great achievements. Former President Clinton views it as one of his major foreign policy successes.

My own party, Fianna Fáil, which was the lead party in Ireland’s government at that time, can look back on the Agreement as one of its finest achievements. In short, the Fianna Fáil leader and Taoiseach Bertie Ahern and the SDLP leader John Hume persuaded other republican parties to follow our path of non-violent republicanism and to depart from a path that divided Irish people. The Agreement provides an opportunity for the people of Ireland to decide whether, in the words of George V, they shall “*work together under one parliament in common love for Ireland upon the sure foundations of mutual justice and respect*”.

The core principle of the Agreement was the acceptance by all political parties and both governments that the future of Northern Ireland would be decided by the people of Northern Ireland. It was agreed and accepted that Northern Ireland would remain part of the United Kingdom until such time as a majority of its people wished to change that arrangement and become part of a united Ireland. Under the Agreement the British and Irish Governments:

- (I) recognised the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland;
- (II) recognised that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland;

(III) acknowledged that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the (then) wish of a majority of the people of Northern Ireland, freely exercised and legitimate, was to maintain the Union and, accordingly, that Northern Ireland's status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland without the consent of a majority of its people;

(IV) affirmed that if, in the future, the people of the island of Ireland exercise their right of self-determination on the basis set out in sections (i) and (ii) above to bring about a united Ireland, it will be a binding obligation on both governments to introduce, and support in their respective parliaments, legislation to give effect to that wish;

(V) affirmed that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities;

(VI) recognised the birth right of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirmed that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.

In order to give effect to the Agreement the two governments agreed that the Irish Government would ask the people of Ireland to change those parts of the Constitution of Ireland relating to the Irish constitutional position on the status of Northern Ireland, and the British Government would ask the United Kingdom parliament to change British legislation relating to the constitutional status of Northern Ireland.

Accordingly, the former articles 2 and 3 of the Irish constitution (which until that time had asserted Irish sovereignty over the entirety of the island of Ireland) were replaced with new articles that recognised that *“a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island.”*

The Northern Ireland Act 1998 was also enacted by the United Kingdom’s Parliament. It altered the position of Northern Ireland under the British constitution by declaring that Northern Ireland in its entirety would remain part of the United Kingdom and would not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll. However, if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland, then the Act provides that the Secretary of State for Northern Ireland shall lay before Parliament such proposals to give effect to that wish. The First Schedule to the Act provides that the Secretary of State shall exercise the power to call a poll if at any time it appears likely to him or her that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland.

We know from the recent decision of the Northern Ireland Court of Appeal in **McCord v Secretary of State for Northern Ireland [2020] NICA 23** that this statutory provision does not require the Secretary of State to act in an adjudicative or regulatory capacity: *“They involve him making political judgments about whether it is in the public interest to hold a border poll and as to whether it appears likely to him that a majority of those voting would express a wish to form part of a united Ireland.*

These political judgments do not involve analysis of “comparator” cases with which the respondent might otherwise be required to act consistently.”

Political reality dictates that this will not be a decision made exclusively by a Secretary of State for Northern Ireland. Even though he or she is the person directed by statute to call such a poll, the reality is that any such decision would only be made by a Secretary of State after it was agreed to by a British government. The good relationship that has existed between the two governments in recent times also dictates that it would be very surprising and unusual if such a decision was taken unilaterally by a British government without, in the first instance, discussing it with their Irish counterparts. In practical terms, this means that an Irish government would have to be involved in preparatory work prior to the calling of such a poll.



For the purpose of this paper I am assuming that at some stage over the coming decade a future Secretary of State for Northern Ireland will make the political judgement provided for in the Northern Ireland Act 1998 and call a poll asking the people of Northern Ireland whether or not they wish to cease to be part of the United Kingdom and form part of a united Ireland. This appears to be a reasonable assumption, having regard to the current political and demographic trajectory of Northern Ireland. Before such a poll is called there needs to be clarity on certain critical issues in advance of people voting. These critical issues include:

- (I) What would a united Ireland look like politically?
- (II) What would be the economic consequences of a united Ireland?
- (III) What laws would operate in a united Ireland?
- (IV) How would the British identity of unionists be recognised and respected in a united Ireland?

It would be chaotic and unfair to everyone voting in Northern Ireland if no efforts were made to answer these questions in advance of a poll. Otherwise, people will be voting without any awareness of the type of new united Ireland that may develop if the poll is approved by the people of Northern Ireland. Answering these questions is a task that cannot be delegated to any one group or political party on the island of Ireland. It is not for the current Irish government or any one political party to dictate what a new country should look like.

The reality, however, is that it will be difficult to engage unionist parties in debating what a new Ireland should look like in advance of any poll since their primary focus at that time will be, quite legitimately, on winning the electoral contest for those who favour retention of the Union. Therefore, a huge responsibility rests on civic groups, freed from the constraints of party politics, to propose, discuss and debate what this new country may look like and how it may operate.

Voters must be informed in advance of any poll what type of political framework would be established in a new united Ireland. That requires proposals as to what would be the constitution of the new country. At present, Northern Ireland exists pursuant to the British constitution which is unwritten and derives from statutes and convention. Ireland operates pursuant to its written constitution that establishes the political and legal architecture of the state. Irrespective of the charm and resilience of the British constitution, it is not tenable for a new state to base its new constitutional framework on conventions that, by definition, cannot have existed prior to the commencement of that state.

The Irish constitution is an admirable document that, on its promulgation in 1937, enshrined democracy and human rights at a time when those principles were under siege in Europe. It has been a resilient document, amended and interpreted over the years to meet the developing aspirations of our country. However, it was not drafted for the purpose of establishing a unitary and diverse state in the 21st century.

Consequently, neither the current Irish constitution nor the British constitution that operates in Northern Ireland will be sufficient for the purpose at hand. A new Ireland requires a new constitution.

IV

It is important that whilst we try to formulate a broad and accommodating constitution that we do not shackle ourselves to the political mind-set of the 20th century. The political and religious divisions on the island of Ireland that caused partition are now much less pronounced and considerably different to what they were 100 years ago.

In short, politics and society on this island have changed significantly during those hundred years and that must be recognised by ensuring that a new constitution is not framed within the context of a tired conflict that originated in a different era.

Back in 1921, the dominant political division in Ireland was between unionist and nationalist. Further, the religious division between catholic and protestant that was so pronounced at that time has, in most places, faded in intensity with declining religious observance. In fact, today the primary religious division on the island is between those who are religious and those who are not.

Today, there is no one dominant political division on the island but there are numerous political fault lines such as exist between:

- (I) those who are socially liberal and those who are socially conservative;
- (II) those who are economically right-wing and those who are economically left-wing;
- (III) those who support membership of the European Union and those who oppose membership of the European Union;

- (IV) those new Irish people who immigrated onto the island in recent years and those who were born, and whose forebears were born, on this island;
- (V) those who own property and those who do not own property;
- (VI) those who are employers and those who are employees;
- (VII) those who are high-paid workers and those who are low-paid workers, and
- (VIII) those in Northern Ireland who are unionist/loyalist and those who are nationalist/republican.

Aside from these actual and perceived political divisions, many people on the island now view themselves as either being apolitical or coming from the centre ground of politics. Many are neither interested in nor view themselves as participating in divisive politics.

These factual political fault lines are relevant in confronting a traditional analysis, feared by some pro-union parties, that views Irish unification as involving a homogenous group of catholic nationalists in Northern Ireland trying to force a homogenous group of protestant unionists into a state that will be controlled by an island dominated by catholic nationalists.

It needs to be emphasised that such an analysis is not an accurate presentation of the current state of politics operating on the island. It also misrepresents the development of unionism in Northern Ireland and understates the role of those progressive voices in unionism who, whilst retaining a pro-union standpoint, have a much broader and complex view of politics and political choices.

A more benign analysis, but one still feared by unionism, is that a united Ireland will result in a complete diminution of its political influence. Instead of being able to exercise considerable political influence, as unionism claims to have enjoyed within the United Kingdom, unionism in a new united Ireland will be very much subordinated to a non-unionist majority. That analysis is also inaccurate for two reasons.

First, an analysis of the aggregate vote achieved by unionist parties in Northern Ireland and an appraisal of the real political influence exerted recently by unionism in British politics reveals that this influence is limited. While the DUP had, between 2017 and 2019, exercised significant influence through its support of a minority Conservative government, the nature of the first-past-the-post system guarantees that such a level of influence in the United Kingdom will be a rare event.

In the 2019 United Kingdom general election the DUP and UUP received 337,251 votes, constituting just over 1.1% of the total votes cast in that election. Those 337,251 votes would have resulted in unionism having 11.3% of the vote of the electorate of a new united Ireland based on turnout and voting in that UK election and the Irish general election of 2020. Ireland's multi-party system and tradition of coalition governments make it far more likely that unionist parties would consistently have a part to play in the formation of governments in a united Ireland. In short, unionism in a new united Ireland would have a much greater influence in the governance of a new united Ireland than it currently enjoys in the governance of the United Kingdom.

Second, the strong likelihood is that alliances would form between unionist parties and southern parties who enjoy compatible policies on economic and social issues. Changes in political division would see parties coalescing along modern political lines, with a consequent increase in the influence of such coalescing parties.

V

It is not for any one individual or party to draft a constitution for a new Ireland. No one should seek to monopolise the progress of this debate by setting down preconditions that would be contrary to the objective of trying to reach an agreement through debate and consensus. There are some core principles, however, that must be central to any such constitution.

One is that the constitution must be based on a system of democracy that guarantees equality of representation to each citizen. Another is that the constitution must provide clear protections and rights for all citizens that can be vindicated through access to courts independent of government and the legislature.

There are some general themes for a new constitution that are worth discussing and which ultimately will require decisions before any new written constitution can be proposed. First, who should be the head of state of a new Ireland? Notwithstanding the progress of politics as described earlier in this paper, at 11% of the electorate unionism may be concerned that it will indefinitely be required to support an office holder to whom it has no real allegiance and from whom it may feel alienated. A new constitution will need to be structured in a way that ensures important office-holders, especially the holder of the highest office, will have the trust and allegiance of all of the communities of the island.

Second, how would government and opposition be formed? The reality is that future governments would be based on different political parties coalescing together, as happens in Ireland through negotiation and in Northern Ireland through the mandated allocation of executive functions provided by d'Hondt. Political parties in a new Ireland would exert influence and assume positions in government based on their electoral success and the compatibility of their policies with those of other parties. It would be highly unusual for there ever to be a single party government.

Nonetheless, in order to ensure that pro-union parties retained influence in an Irish government there could be a requirement in the new constitution that a certain number of cabinet positions would be filled by representatives of unionist parties. Since the position of leader of government (First Minister or Taoiseach) would be the most significant office held in any new political system, the new constitution could also afford a greater role to the deputy leader of government (Deputy First Minister or Tánaiste). There would be merit in requiring that both these positions would be filled by popular vote.

It is important to the functioning of an effective democracy that there is opportunity for a strong opposition to hold government to account. One of the weaknesses of the current d'Hondt system in Northern Ireland is the inability to ensure there is real opposition. Any new constitution must seek to ensure that all political voices and traditions in Ireland that achieve broad support have the opportunity to oppose government and that they are not, for the purpose of perceived harmony, compelled to enter government. Functioning democracies that operate under a proportional representation system ensure that governments are created through negotiation and compromise. This is achieved without mandatory coalition being imposed by law.

There would also need to be elections for the new legislative body that will be responsible for making laws for the new unitary state (The Northern Ireland Assembly or Dáil Éireann). At present Northern Ireland operates under a devolved unicameral system. However, at a national level both the United Kingdom and Ireland operate bicameral systems. It would be beneficial for a new united Ireland to retain a bicameral system with one house sitting in Dublin and the other sitting in Stormont. One could be an Irish Assembly/Dáil Éireann and the other could be an Irish Senate/Seanad Éireann. The latter would obviously have to be given more real and effective powers than those currently exercised by the House of Lords or the current Seanad Éireann and would need to be constituted entirely differently from its present-day counterparts. The Irish Senate could allow for greater representation for those coming from the unionist tradition, whilst the Irish Assembly must, in order to retain democratic legitimacy, represent all the people with an equal distribution of seats per capita. Nonetheless, multi-seat constituencies electing 6 or more candidates will enable full representation for those coming from the unionist tradition.

Potentially some of the most contentious issues that would arise in practice, in the practical implementation of a reunification ballot, would be issues relating to the flag, the anthem and the emblems of the state. Such issues would need to be addressed extremely carefully, within a pre-agreed structure that ensures a consultation that is deep and broad.

Consultation would need to occur at not less than two levels – both at the level of all the political parties of the island but also at the level of the citizenry of all parts of the island, possibly within an all-island citizen's assembly. Only proposals that can achieve broad acceptance across the spectrum of different outlooks should be implemented. At every stage, discussions need to be conducted in a respectful and considered manner, conscious of the potential for great strife that exists when people are worried that treasured emblems of their identity might be taken away from them.

In respect of language, there should be recognition that the new state has two national languages – English and Irish. It must also be made clear in advance that if people vote to create a new united Ireland one of the consequences would be that the new country would become a member of the European Union and operate within the eurozone.

Neutrality may become a more complex and contentious issue because unionism may wish to avoid neutrality and support the British state in its conflicts. As people from Ireland have done since independence, people from Northern Ireland will still continue to join the British armed forces. Nonetheless, it appears inevitable that the majority of political representatives at present will support the new state adopting a position of neutrality in international affairs, notwithstanding the close and harmonious links that will continue to exist between the new state and Great Britain.

On the question of policing a decision could be made to adopt a regional system of policing. This would mean retaining the Police Service of Northern Ireland, with any necessary amendments to its structure that would be necessary to reflect the new state. Ireland's police force, An Garda Síochána, could also then be restructured on a more regional basis with all police forces in the new state operating under the supervision of a national Policing Authority that would have careful regard to the particular political and cultural sensitivities around policing.

Until 1921 in all parts of the island – and until 2001 in Northern Ireland – police forces operating under the authority of the Crown had a distinctly political and militarised character. Those police forces – the Royal Irish Constabulary, the Royal Ulster Constabulary and the Dublin Metropolitan Police – frequently applied force against nationalism in the defence of the status quo, and they were frequently targeted with violence during times of conflict.

One of the great successes of the early Irish state was the establishment of An Garda Síochána. Likewise, possibly the most unqualified success of the modern peace process in Northern Ireland was the establishment of the Police Service of Northern Ireland. Both forces established broad support within their respective jurisdictions within short spaces of time after their establishment – support that certainly had not been enjoyed by their respective predecessors. Planning for policing in a united Ireland will need to be approached with enormous care and attention in order to ensure that new policing arrangements enjoy the full support of all sections of society.

Finally, the political structure that will probably cause least difficulty is the judicial arm of government. The courts in both jurisdictions have not deviated enormously as both operate under a common law system. Decisions will have to be made as to which laws continue to operate in the new unitary state. Until such time as new laws are enacted, it will be necessary to allow for the continued operation of different laws on both sides of the (present) border until, over time, the new legislature passes laws that operate for all of the new territory.

Preparatory work for the harmonisation of the laws should be completed in advance of the coming into existence of the new legislature. However, as can be seen in countries that operate federal systems, it is feasible for different parts of the same country to operate under different statutory frameworks; indeed it is already the case that the statute book of Northern Ireland is not identical to that of the other constituent parts of the United Kingdom.

The process of harmonisation of the respective statute books is one that can be achieved in a gradual and orderly way that allows the best aspects of both jurisdictions to be integrated to a whole that is more than the sum of its parts.

VI

Prior to partition, the north-eastern part of the island was economically the strongest. Most of Ireland's manufacturing was based there and Belfast was a powerhouse for industries that were much in demand internationally. The economy of the rest of the island was very much based on agriculture. One of the main reasons why unionism opposed home rule and independence for the whole island was the prospect of the economy of the north east being subsumed under the control of those who were perceived as unproductive and inefficient southern nationalists. This was encapsulated in typically trenchant form at Coleraine on 21 September 1912 by the Conservative Member of Parliament for Birkenhead, F.E. Smith, who gave this analysis of the threat posed to unionism by the Third Home Rule Bill:

“Look at the Irish Nationalist members to-day. There is not one of them, if I had my way, that I would trust to administer a second-hand clothes shop. There is not one of them who has ever given sign of a greater degree of organising power than is necessary to arrange a well-conducted cattle drive. And these are the men under whose heel the great merchants of Belfast are to be placed. In other words, the successful men are to be placed under the heel of the unsuccessful men. The progressive part of Ireland is to be controlled by the unprogressive part of Ireland; and this is to be the progress of your country, this is to be the reconciliation of your democracy.”

That criticism was unjustified then, but would be unthinkable today. The economy of the whole island has changed significantly since partition.

The single most remarkable change in the economy of the island is that Ireland has been transformed from an agriculture-based economy into a highly developed knowledge economy, focused on services in high-tech, financial services and agri-business. It is an open economy that has a very strong foreign direct investment base. The economic change that occurred in the south arose predominantly as a result of our membership of the European Union and more specifically the single market. As noted by Kevin O'Rourke at pages 146 and 149 of his *"A Short History of Brexit. From Brentry to Backstop"*:

"The second major turning point in Ireland's economic fortunes was 1992, when the Single Market transformed its economy. During the 1990s Ireland was an extraordinary over achiever. A comparison between Ireland, on the one hand, and Northern Ireland, Scotland and Wales, on the other, is informative. Ireland had been gaining ground on these UK regions from 1960 onwards, as we have already seen, which might represent a gradual process of convergence occurring within the British and Irish regional economy. The Irish acceleration from 1990 onwards, however, represents something entirely different. It seems clear, not only that the European Union was fundamental in transforming the Irish economy, but also that Irish independence was essential in exploiting the opportunities that the European Union afforded... Ireland would never have done anywhere near as well as it in fact did, had it remained a mere region of the United Kingdom.

...

But EU membership and the Single Market programme of the late 1980s and early 1990s were essential in allowing Ireland to finally reap the full economic rewards of its independence."

Conversely, the Northern Ireland economy did not benefit as much from its membership of the single market. The reality is that the impact of 30 years of violence had an obvious and severe impact on its economic development.

Nonetheless, Northern Ireland has not achieved the type of economic boost in the past twenty years that one would have expected in light of its ongoing political stability. Foreign direct investment has not been attracted there in the same way as it has been attracted into Ireland. As a result, the recent economic history of Northern Ireland has been dominated by low productivity growth. The key factor behind the poor productivity performance in Northern Ireland, according to John Fitzgerald and Edgar Morgenroth in their paper on the Northern Ireland Economy: Problems and Prospects (July 2019), has been the low investment in physical and human capital. In fact, the authors identified the failure to reform the education system in order to reduce the number of early school leavers and increase the number of graduates as the single most important factor in Northern Ireland's low growth.

It is invidious to compare the performance of the two economies since partition. It can also be misleading. Both jurisdictions suffered economically as a result of partition. In fact, it is hard to see any economic advantages that have accrued as a result of partition with the exception of the access that Northern Ireland retains to the considerable resources of Great Britain. This manifests itself most clearly through the significant subvention made annually to Northern Ireland by the United Kingdom central government. In 2018-19, expenditure in Northern Ireland, incorporating spending on services and of accounting adjustments, was £27.888 billion. Revenue raised totalled £18.5 billion, leaving a deficit of between £9 billion and £10 billion. This subvention gives rise to a legitimate question as to how the missing £9-10 billion will be made up in order to ensure that people of the new country will be able to maintain their current standard of living.

The focus on the amount of the annual subvention by many politicians from the unionist tradition strikes me as strangely defeatist. Northern Ireland should not be doomed to forever be a relatively poor region of a wealthy country, forever subsidised by taxpayers in wealthier parts of Great Britain. It does not have to be that way. Harnessing the strength of the whole island would help make these six counties a more prosperous region of a prosperous country.

For many decades, unionists would have derided the idea of Irish unity improving their standard of living. Ireland consistently fared worse on most economic indicators than Northern Ireland.

However, in recent decades the position has reversed. Ireland's per capita Gross National Income is about 45% higher than that of Northern Ireland. Wages in Ireland are about 30-35% higher than those in Northern Ireland. Social welfare rates in Ireland are considerably higher. I do not say these things in a boastful way. We must be careful never to fall into the ugly game of economic one-upmanship and we must always remember that economic tides ebb as well as flow. However, the economic data demonstrate that Irish unity offers the people of Northern Ireland a path to greater prosperity, higher wage levels and higher standards of living.

Moving beyond a partitionist analysis of the economic prospects for a reunified Ireland is essential. Narrow, limited forecasts that speculate about the likely "cost" of reunification to people north and south betray an incapacity or failure to grasp the island's potential.

At best, such projections derive from a static analysis, based on the economies of the two jurisdictions as they are, rather than on what an all-island economy could become. At worst, they evidence a mindset that is closed to new ideas and wishes to preserve the status quo. Instead, the focus ought to be on strengthening the economy of the entire island, before unleashing its full potential.

At a very basic level, the addition of 1.9 million people in Northern Ireland to 4.8 million people in the rest of the island would create a significantly larger market for the provision and consumption of goods and services. It would also result in a substantially greater number of people to fund essential services on the island. The remarkable growth of the Irish economy since the late 1980s / early 1990s – albeit with a period of significant retrenchment in the period of the global financial crash of 2008 – shows how the astute use of the corporation tax system, combined with far-seeing infrastructural investment, can yield huge and enduring dividends.

An extremely attractive corporation tax rate and plentiful supply of highly-educated young people will ensure the development of a vibrant, modern, knowledge-based economy. It is vital for the whole island that we lock in the prosperity that leading multi-national corporations and others have brought to the island to date. Just as the potential of the south was unlocked by attracting high-quality foreign direct investment, so too could that of a new united Ireland. An enlightened approach by the European Union must allow the continuation of highly attractive corporation tax rates to the entire island post-reunification. It is in the European Union's interest to encourage the establishment of a thriving, peaceful and prosperous Ireland. That is precisely the future for Europeans that Robert Schuman had in mind.

Promoting the location of attractive inward investment into what is now Northern Ireland would provide high-quality employment, while encouraging balanced regional development. By forging close ties between third level institutions and new innovative businesses, the conditions could be created for the retention of current employment and the founding of new ventures.

The opportunities for the island are only limited by the extent of our collective imagination. For instance, the construction of a high-speed rail link between Belfast and Dublin is an obvious means to greatly boost the appeal of both cities for inward investment. The network could be extended to other cities thereafter. The maintenance and development of the all-island energy market, further emphasising renewable energy sources, would not only be environmentally responsible, but cost-efficient for users of power. Such is the kind of progressive, innovative thinking that we must embrace.

Rather than engage in a polarising appraisal of the different economic performances, there is a benefit in trying to outline some factors that would assist in enabling a new Ireland to get through the economic challenges that will occur in the short term. These are factors that are not within the complete control of the people of the island but will require the support of other countries and international agencies:

- (I) the United Kingdom should agree to the gradual phasing out of the subvention during a transition period of 10-15 years, and possibly longer in the case of the payment by the UK exchequer of public service pension liabilities incurred prior to unification;
- (II) the European Union should provide regional development funding for the new country during that transition period;
- (III) Ireland's very successful corporation tax rate of 12.5% should apply throughout the whole island;
- (IV) the agencies that support foreign direct investment into the new country should have a particular focus on attracting investment into what is now Northern Ireland;
- (V) third-level institutions in what is now Northern Ireland should become drivers of the knowledge-based economy in that region of a united Ireland, and
- (VI) the new country should be part of the European Union and the eurozone.

VII

The most important requirement for any new state is that it provides protection for the rights of its citizens against any arbitrary or discriminatory infringement by that new state or its agencies. Without these protections, and independent courts to give them effect, the new state will soon become a power mechanism of its governing majority. Both jurisdictions on this island suffered in the aftermath of partition as a result of dominant orthodoxies being imposed in breach of individual rights.

At present, the European Convention on Human Rights applies in both jurisdictions. That should form the basis for the legal protections enjoyed by persons living in a unified Ireland. A new constitution should also enumerate and include those human rights. All rights currently enjoyed by people living in either jurisdiction should be maintained. It would be regressive and unsustainable to remove rights currently enjoyed by people living on the island.

The Constitution should also contain provisions to protect the rights, cultures, traditions and identities of minorities. Although political identity and representation has become more fractured and less homogenous, the establishment of rights for groups is an area of law that needs to be developed, provided it does not infringe upon the personal rights of the citizen. For instance, the right of groups to practice their religion or the rights of groups to assemble, not merely the rights of individuals to do so, are rights that would need to be recognised and protected by the state. Courts would be constitutionally mandated to ensure that the rights of groups were not violated or infringed by executive or legislative actions. That would necessitate giving courts authority to strike down legislation that infringed these rights.

Aside from strong protections for the human rights of all, how will the new country provide active ongoing recognition and protection for the British identity of what will be 11% of the population of the new island coming from the unionist tradition. The courts and constitutional rights will ensure that all their religious and cultural freedoms will be fully protected, as will be the religious freedoms of all religious people on the island. However, this freedom will be protected in a state that does not actively discriminate in favour of any one religion. In fact, religious references or affiliation should not form any part of the new constitution.

The new country needs to give recognition to the political allegiance that unionism holds to Great Britain. The most appropriate way to provide such recognition is to ensure that people from Northern Ireland or who will be born in the future in the area of Northern Ireland will be entitled to maintain and claim British citizenship.

That means retention by the United Kingdom parliament of those provisions within the British Nationality Acts that allow persons from Northern Ireland to claim British citizenship and a British passport. An indefinite assurance should be provided by the British government that this privilege will remain available to all people born in the future in the six counties of Northern Ireland.

Another method of ensuring such recognition would be by establishing much closer relationships with the three British nations - Scotland, England and Wales. A new Ireland should become politically closer to, and view itself as close to, these historically close four nations. If Scotland secures its independence and becomes a member of the European Union, the need for this four-nation partnership will be greater than ever.

The Belfast/Good Friday Agreement created an institution, the British/Irish Council, in which Governments of all the nations of these islands can cooperate on issues of mutual concern. It is fair to say that this institution is not currently one that plays a significant role in the governance of these islands. In a new constitutional dispensation this institution will need to be expanded and enhanced. This, or an equivalent institution, will be needed to provide a more substantial framework for addressing the challenges of the 21st century and to provide guarantees to unionist people in Ireland and Scotland that their voices will continue to be heard.

Irrespective of what the new country requires or permits, nothing will diminish the traditions and culture of unionism. Its strength lies in its people. Its home is in Ulster. Its future rests in improving the quality of life for all the people on the island of Ireland within the European Union and in close harmony with the three other nations.

VIII

There is a tendency amongst Irish republicans and nationalists to ignore the divisions that existed within Irish society at the time of partition. Although it was an act of the Westminster Parliament that partitioned Ireland, the reason for that partition was because of what were viewed as irreconcilable differences and divisions between Irish people. Looking back at those divisions and their irreconcilability, it is probably fair to say that partition was not an irrational political decision. I believe it was not the correct decision; but it was not an irrational decision.

Irish people then were divided on grounds of religion, political affiliation and class. These factors provided reasons for the partition of Ireland. Partition assisted in masking those divisions. Today, those divisions no longer exist in the same way.

Although the decision to partition the island 100 years ago was not irrational, its continuation is increasingly becoming irrational. This has been illustrated in our collective efforts to respond to Brexit and Covid-19. Both were events outside the control of the people of the island but both had and continue to have an extraordinary impact on the island, an impact which could have been responded to much more effectively with a united island approach.

Although partition has had disastrous consequences for both parts of the island, there will be strong and coherent arguments made by those in favour of Northern Ireland remaining part of the United Kingdom. That will not be an argument exclusive to unionists. Many people in Northern Ireland do not view themselves through the same green-or orange-tinged glasses that are worn by most Northern Ireland politicians. Those in support of maintaining the union may be attracted to the efficiency of a United Kingdom freed from what they view as the limitations imposed by the European Union. They may prefer the economic certainty associated with membership of that United Kingdom. They may cherish the financial support that Northern Ireland receives as a poorer region in a wealthy country. They may be satisfied with the protections provided for different cultures and traditions in Northern Ireland that have flowed from the Agreement.

Consequently, any referendum on the future status of Northern Ireland will be vigorously contested and professionally argued. Democracy dictates that the people of Northern Ireland will decide that question. There will also be a requirement for a poll in the south to approve any new constitutional arrangement. There must be an acceptance of and respect for both democratic processes and outcomes. Violence is not a legitimate method of seeking to influence or overturn the democratic wishes of the people of both jurisdictions.

Resolving the problems caused by the partition of Ireland and aspiring to the cherished aim of reunification are legitimate political issues that should be decided by discussion, debate and democracy.



**The political, economic and
legal consequences of Irish reunification.**

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