

# **What Exactly Do We Mean By Irish Unity? How Could It Come About?**

**Paper To Be Presented By**

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**In his paper, Senator McDowell makes the case for a confederal form of Irish unity in which the two parts of Ireland agree to share sovereignty, including EU membership, while retaining their separate identities.**

**He suggests that Northern Ireland could leave the UK but still retain some form of link to the Crown, like Canada or New Zealand, while a member of an Irish confederation in order to give substance to the guaranteed dimension of Britishness under the Good Friday Agreement in the event of Irish unity.**

## **The Meaning Of Irish Unity Will Decide If It Can Be Agreed**

There are two major issues in relation to “a united Ireland” or “Irish unity”.

The first is as to what these terms mean.

The second is as to whether or how “Irish unity” or a “united Ireland” could come about by consent.

But these two issues are not separate. In reality, they are inseparable.

There is simply no point in holding a border poll on Irish unity if the people taking part in such a vote do not know what they are voting for.

You only have to look at the post-Brexit referendum in the UK to understand that putting a simple binary decision on an abstract proposition to the people without affording them the right to understand the consequences of their choice is fraught with danger.

## **The Options Broadly Stated**

If by a vote for Irish unity or a united Ireland, you mean a decision for Northern Ireland to leave the UK and to become part of a single, unitary Irish republic under its existing constitution (with or without amendment) or to become part of a single, unitary Irish republic with a new constitution to be adopted (**Option A**), that is one thing.

If, on the other hand, you mean a decision for Northern Ireland to leave the UK and become a part of an agreed Irish confederation

between two parts - Northern Ireland and the Republic (**Option B**)- that is another thing entirely.

The events, steps and processes required to achieve Option A rather than Option B are entirely different.

### **A Unitary State – Option A ?**

The Taoiseach, Leo Varadkar, recently stated that a united Ireland would be a “different state”.

Presumably he was realistically accepting that the 1937 constitution of the Republic which was framed on the basis that it would be the constitution of an all-Ireland republic (with provision in Article 15.2 for a “subordinate legislature” presumably in Stormont), would not be the constitution of a future, united Ireland.

Put bluntly, while some may wish for a unitary Irish state, it remains the form of Irish unity least likely to come about in the short or medium term because it is the least acceptable form of Irish unity to a substantial majority in Northern Ireland (and perhaps too in the Republic).

### **Problems With A New Unitary State**

Asking northern unionists and the many Catholics who regard themselves as Northern Irish to abandon the union in a border poll seems very problematical unless that choice is seen by them, all in all, to be in their political, social and economic interests.

To join a unitary Irish republic seems the least attractive choice for any unionists – especially compared with a confederal form of Irish unity which would leave Northern Ireland, with which they are familiar, intact as a jurisdiction.

In terms of practicality, a unitary state is also the most difficult to negotiate.

It would entail amalgamation of institutions, courts, police, the judiciary and an entirely new constitution to be drafted by whom?

Drafting a new, unitary constitution in the course of a negotiated process of persuasion is fraught with difficulty and danger.

Who would the drafters be? On whose instructions would they act? Would unionists be reasonably expected to sit down around a table to draft such a document?

Would there be a constituent assembly to approve the draft? Would it be put to the people of the entire island in separate referendums? What would its content be? Would it end up a collage of current popular concerns?

Would it be accepted by a separate majority in each jurisdiction?

### **The Confederal Alternative – Option B**

Does it not make much more sense to develop and put forward a confederal form of unity which would leave both jurisdictions largely intact and in which, as distinct from a federal solution, only limited powers would be devolved by each part of the confederation to its institutions?

Under such a model, powers devolved to the confederation would relate to its membership of the EU (presuming that both parts of Ireland would be part of the EU) and to other aspects of international relations, and to other matters only where it was agreed that authority needed to be shared at a confederal level.

Confederal institutions of this quite limited kind would probably have to include some balanced form of joint ministry and some elected

body to which the ministry would be accountable. There would have to be some form of tribunal or court to decide on confederal matters in dispute.

Each part of the confederation would have its own constitution, parliament, government, laws and institutions including local government, and its own social welfare system, educational system, police force etc.

A treaty of confederation could also be a framework for future development on a consensual basis.

It is possible, for instance, to consider a situation where the Republic remains as it is, and Northern Ireland could have some continuing connection to the Crown - in the same manner as Canada and New Zealand do - but for both parts of Ireland to share sovereignty on matters – including international relations - devolved to the confederation's institutions.

Such a form of Irish unity would be non-threatening, highly consensual in character, and mutually respectful.

If approved by a majority of people in Northern Ireland, it would not constitute a danger or a threat or a provocation to those reluctant elements in either community who might have voted against it.

It would demonstrate to those who value their British-ness that the Irish-ness of others is no threat, and vice versa.

Daily life could continue as normal in the absence of a constitutional “Big Bang”.

And such a confederal relationship between the two parts of the island would largely defuse the “existential threat to identity”

dimension that bedevils northern politics and recasts every mundane issue as a part of a greater constitutional zero-sum game.

I argue that both parts of Ireland and both main traditions on this island would be best served by a settlement characterised by evolution rather than revolution.

It is clear that the practicability and likelihood of achieving a majority vote in favour of Irish unity almost certainly depends on the shape of the proposed new order rather than on any vague, aspirational or conceptual proposition.

The well-known political slogan, “If you don’t know, vote No” is very powerful in any referendum debate.

It is noteworthy that the Fine Gael Party proposed a confederal form of unity many years ago. Mary Lou McDonald has stated that she would consider a confederal form of unity. Professor Brendan O’Leary has argued for confederalism for a long time and has elaborated on its potential. Claire Palley has advised the DUP to consider it as an option instead of drifting into a unitary Ireland.

Apart from northern unionist opinion, it might be the form of unity with which most people in the Republic would feel most comfortable.

## **A Second Forum?**

That brings us to the issue as to how a package or proposition for consideration in plebiscites held north and south of the border might be developed.

We often hear talk about the Government of Ireland establishing a second forum open to all in the island to consider and debate and

formulate a model or a number of models of what might amount to Irish unity or a united Ireland.

The problem with such an approach is that those who at the moment do *not* want to end the union as it currently exists and who are disposed to reject a united Ireland *as they presently understand that idea* have little or no incentive to participate in such a forum and might well reasonably consider that any such participation on their part would imperil or damage their cause, and, in the case of elected politicians, imperil or damage their own political interest.

Why exactly should we expect a unionist politician of whatever hue to attend and participate in a forum whose terms of reference include a possible or probable majority recommendation for the establishment of a single, unitary Irish republican state under the existing Irish constitution or a replacement constitution?

Would such a unionist be there to “*argue his or her corner*” for the Union, or to negotiate a compromise report, or simply to fly the flag of opposition to any form of Irish unity?

Short of participating with a mandate to attempt to negotiate a compromise report, the short-term political interests of most unionist politicians would be equally or much better served by steering well clear of such a forum and remaining disengaged from any such structured dialogue.

In short, have we any real reason to believe that a new forum established by the Government of Ireland would not have the same outcome or non-outcome as the Forum for a New Ireland which reported in 1984?

## **New Realities**

Of course, things have changed radically since 1984. There are new realities. We have had the Good Friday Agreement; we have had the St Andrews Agreement; we have had de-militarisation; we have power-sharing; we have had an open border; we have had an all-island economy; we have had economic prosperity; and we have had some progress on reduction of sectarian consciousness and tension in Northern Ireland.

We also know so well that none of these realities can be taken for granted – especially if the fabric of the present settlement begins to fray, un-ravel or tear in the context of Brexit.

We must add to these realities **three further important realities** – demographic change, particularly in Northern Ireland, and social, constitutional and political change in the South, and economic change.

### **The First New Reality: Demographic Change**

Demographic change must be considered carefully and with a good deal of circumspection.

The population of the Republic which was in decline (due to emigration) from 1921 up to 1961 when it stood at 2.9 million, has rapidly expanded to 4.9 million, just short of 5 million.

In Northern Ireland, the population has also grown from 1.4 million in 1961 to about 1.9 million today (3% of the UK population, 30% of the population of the island of Ireland).

The entire island's population is now approaching an expected 7 million by 2025. That figure would put the island's population ahead



of eleven EU member states, including states such as Denmark and Finland.

In Northern Ireland, the internal demography is rapidly changing too.

Latest figures show how quickly the religious balance in the North is evolving.

Catholics now account for about 46% of the population and will, on present trends, outnumber all other Christian denominations, (currently 48%) by the 2021 census.

Among those of working age, Catholics constitute 44% while all other Christian denominations are 40%.

Of school children, 51% are Catholic while other Christians are 35%.

By contrast, Catholics number only 35% of those over 60, while all other Christians in that age group are 60%.

The majority of university students in Northern Ireland are Catholic and of those Northern students studying in British universities, 65% do not return to Northern Ireland.

Present indications are that Catholics could outnumber all other Christians as persons entitled to vote in 2028 or 2030.

Belfast city is likely to have more Catholics than other Christians in the 2021 census, and only two counties out of six – Antrim and Down – will have significant Protestant majorities.

In short, the denominational demography in the North has utterly changed.

From a post-partition 70:30 ratio between Protestants and Catholics, the relative size of those cohorts is approaching equality.

Northern Ireland has ceased to be a Protestant state in so far as numbers are concerned.

### **No Point In Holding A Border Poll Now**

However, it would be entirely wrong to think, on the basis of a census headcount, that these denominational and demographic changes of themselves signal the inevitable emergence of a voting majority for a united Ireland in the short or medium term.

There are evidently many Catholic unionists and there are also many Catholics who see themselves as Northern Irish rather than simply as Irish.

There is no reason to believe that such Catholic voters would entirely ignore their own personal economic interests or convictions by voting to end the union.

On the contrary, any border poll for a united Ireland held now or in the next few years would, we are told by reliable opinion pollsters, be roundly defeated.

There is little reason to doubt those opinion pollsters – especially when nobody has yet articulated what kind of unity we are talking about or what the consequences would be for the North's major public sector employment cohort, and when nobody can explain how people in Northern Ireland would be able to bear a precipitate withdrawal of £10 billion in annual UK exchequer subsidies.

In the absence of clarity on those issues, any corresponding referendum in the Republic on immediate Irish unity would quite likely founder as well.

So calls by Sinn Féin for a border poll in present circumstances are not merely very premature; they are utterly pointless and serve no

useful purpose other than to heighten political polarisation which may be in Sinn Féin's interest as they see it.

### **The Second Reality: Political, Social and Constitutional Change In the Republic**

The Republic is likewise ceasing to be a Catholic state – but for quite different reasons.

The institutional power and influence of the Catholic church – once so dominant in the post-independence Free State and in De Valera's republic – has shrivelled to political insignificance.

With some exceptions such as denominational education (which persists on both sides of the border), the South has become more liberal, open and secular as a civil society than the North.

Denominational identity has largely ceased to matter in the Republic's civil society. Even at a subconscious level, people meeting in social contexts do not bracket each other denominationally – especially among the younger age cohorts.

Northern fears that "Rome still rules" south of the border are no longer justified.

On the contrary, the majority of people in the Republic now wonder why abortion laws and laws on homosexual marriage were so slow to change in the North.

In short, no Christian of whatever denomination in Northern Ireland has anything to fear from the South in terms of the free practice of his or her religion.

The Republic's constitution has been amended so as to fully accommodate the Good Friday Agreement and to drop the always questionable claim that the Irish government and parliament had a

right to exercise jurisdiction over the North and to impose its constitution on the people of the North.

The people of the Republic amended Articles 2 and 3 of the Constitution expressly to disavow any attempt to unite the two jurisdictions on the island without the “democratically expressed” consent of a majority in Northern Ireland.

### **The Third New Reality: The Economic Reality**

The third new reality is that of economics. On the island of Ireland, there have been widely divergent trends in the latter half of the 20<sup>th</sup> century and the first two decades of this century.

Northern Ireland accounted for 80% of Irish industrial output in the 1920s. Belfast overtook Dublin as Ireland’s most populist city in 1891. As David McWilliams has commented: *“At partition the North was industrial and rich, the South agricultural and poor ...”* The Republic’s industrial output is now ten times higher than the North’s and its exports are 17 times greater. In euro terms, average income in the Republic is nearly €40,000 while in the North it is €24,000.

That difference is less when distributive spending is taken into account.

Even allowing for tax driven relocation of profits in the Republic, it can hardly be argued that independence from the United Kingdom has, since the 1970s, hugely benefitted the Republic.

The capacity of the Republic to attract FDI (some £312bn) since the Good Friday Agreement speaks for itself.

Moreover, the opening of the border to an emerging all-island economy has greatly contributed to the economic well-being of Northern Ireland. Other than the huge annual Exchequer subsidy

from Westminster which is palliative in effect, the union is simply not delivering to Northern Ireland.

It is unclear this week where the Brexit process is going to end. But the likelihood is that the current political advantage accruing to the DUP from holding the balance of power at Westminster is unlikely to survive the widely expected general election in November.

Whether the UK ends up with a Tory government, a Labour government, a coalition government, or with the SNP holding the balance of power, it is hard to see that any form of Brexit – no deal or soft Brexit – is going to benefit Northern Ireland significantly.

Regional disparities within the United Kingdom are unlikely to be reduced under a Tory administration.

The likely abandonment of HS2 suggests that the Tories have little appetite for infrastructural projects to equalise or integrate the UK economy in a manner that favours Northern England, Scotland, Wales or Northern Ireland.

Keeping the border open at all costs is, in these circumstances, of huge importance to the economic well-being of Northern Ireland. Avoiding becoming an economic backwater in a post-hard Brexit UK should be at the top of everyone's agenda in Northern Ireland – especially the unionists.

Northern agriculture faces very substantial challenges which would be greatly exacerbated by any hard border.

There is a very strong argument for Northern Ireland to consider opting for the kind of economic autonomy that has been so beneficial south of the border in terms of taxation policy and FDI.

It is entirely consistent with such increased autonomy that the people of Northern Ireland – Protestant and Catholic, Nationalist and Unionist – should carefully examine whether a confederal relationship with the Republic – in or aligned with the European Union – is not much more likely to bring about the prosperity in Northern Ireland which the South currently enjoys.

Has the union brought out the best in Northern Ireland? John FitzGerald has argued strongly that Northern Ireland's economy has not benefited from the union. Will the union improve the Northern economy post Brexit? Will Exchequer transfers from Westminster grow or diminish under a post Brexit regime of whatever hue?

### **Britishness**

Under the terms of the Good Friday Agreement, the Republic bound itself to recognise the right of all citizens in Northern Ireland to regard themselves as British or Irish or both and to claim citizenship accordingly, and undertook to preserve that entitlement even if the majority in Northern Ireland opted for a united Ireland of whatever kind.

Furthermore, it was expressly agreed that the obligation on the Republic would remain to ensure that any form of unity would afford not merely equality among citizens, including the right to be regarded as Irish or British citizens or both, but also parity of esteem for the “values, ethos and aspirations” of both communities in Northern Ireland and to ensure impartiality between those communities.

### **Journeying Into the Unknown**

On the face of it, then, Irish unity based on a form of confederation between Northern Ireland and the Republic as two jurisdictions in a

confederal partnership seems like the “least worst” form of Irish unity from any unionist point of view.

It seems to me that from a pragmatic point of view, the sensible thing for the Government and people in the Republic is now to consider in depth what form of confederal unity could be proposed.

I agree with the view expressed recently by Hugo MacNeill that it would be better for those who believe in bringing about a united Ireland to formulate and flesh out the proposition that they want to have put to the people in separate referendums – north and south

We no longer have the luxury of simply putting forward the Republic’s preferred unitary option unilaterally on a “take it or leave it” basis.

If we are serious about the pursuit of Irish unity by consent as provided for in the Good Friday Agreement, we must act in a spirit of compromise and of complete respect for those that we seek to persuade.

### **Seamus Mallon’s Proposal**

Seamus Mallon’s recent work *A Shared Home Place* rightly calls for nationalists - north and south – to demonstrate a new generosity of spirit to unionists.

He correctly identifies the need for Northern Ireland to be shared as equals by each of its traditions as part of the badly needed reconciliation process between Orange and Green.

He rejects the idea that a border poll should be held as soon as it appears that there may be a small numerical majority – even 51% - in favour of Irish unity.

His thesis is that the last thing the North - and indeed the whole island - needs is a process whereby a very significant unionist minority in the North finds itself being transferred wholly against its will into a united Ireland. That scenario, he argues, is the makings of another long period of civil strife and inter-communal division.

He examines the question as to whether a 51% majority should suffice for Irish unity. In particular, he examines the argument put forward by Richard Humphreys in his recent work *Beyond the Border: The Good Friday Agreement and Irish Unity after Brexit* (2018) that the legal effect of the agreement is that 51% is legally sufficient.

Mallon's remedy is to review the Agreement and to introduce the requirement that consent for Irish unity should instead be a requirement of "parallel consent", i.e. a majority both of unionists and nationalists consenting where that majority includes at least a substantial minority of each tradition or, in other words, where say 25%, 30% or 40% of the Protestant/Orange tradition consented to Irish unity.

While this suggested change would undoubtedly constitute generosity in a high degree, it could arguably produce a new and harmful veto-type red line into Northern politics.

Mallon's argument concedes that it would be wrong to deny, say, 80% of Catholics (then 48% of the North's population) and 40% of Protestants (then say 46%) the right as a majority (57%) along with others (say 4%), in all, say, 61%, the right to opt out of the union if that were their expressed wish.

That seems clear if one considers that the alternative proposition—namely holding a poll which showed a majority in favour of unity –



could be ignored because it fell below the threshold of commanding a majority of non-nationalist support.

### **Should Parallel Consent Be Elevated To Legal Status?**

There are two other problems with making parallel consent a legal obligation.

How does one define the unionist position? If any former unionists want a united Ireland are they to be considered unionists at all for the purpose of ascertaining whether parallel consent exists? Does religion or religious ancestry determine the matter?

Are the stated views of politicians expressly elected as unionists to be taken as the position of their electors? Can we reasonably expect persons elected as unionists to regard themselves as mandated to take a leading role in a process to end the union?

### **Surgery Not Needed**

I would passionately argue, to use a medical analogy, that Seamus Mallon's diagnosis in *A Shared Home Place* is entirely correct. His "patient history" is truthful and accurate. His analysis of the symptoms of the unresolved conflict of aspirations is spot on. His prescription of political "bed rest" – sharing the home place as equals - and nationalist generosity is correct.

But his suggestion that the Good Friday Agreement should then be admitted for surgery - for the insertion of a parallel consent requirement – risks killing the patient.

After all, there never would - or could - have been a Good Friday Agreement at all if parallel consent had been a part of it. Of that, I am absolutely satisfied based on my involvement in the political dialogue between 1999 and 2007.

If it had been suggested in 1998, the Stormont talks would have collapsed. If it had been suggested in 2006 at St Andrews, those talks too would have failed. There would have been no de-commissioning and no Paisley/McGuinness joint First Ministership.

In any event, a border poll is not likely to result in Irish unity in the foreseeable future unless a substantial number of those who have in the past favoured the union change their minds.

### **Generosity**

Seamus Mallon has spoken and written on the need for nationalist Ireland to be generous - particularly in the emerging demographic balance between Protestants and Catholics in Northern Ireland.

I agree.

Mallon makes it clear in his book that he himself believes that Irish unity may require a separate northern entity with a “half British” ethos - a “kind of confederation”.

In my judgment, the “nationalist generosity” that is now most needed is the stated willingness of the Republic in particular to share sovereignty in a form of Irish unity based on confederation with Northern Ireland on the basis I have mentioned – a confederal outcome that really accommodates the British dimension to Northern Ireland.

The “generous” thing to do is to take off the negotiation table any proposal for the absorption of Northern Ireland into a unitary Irish republic.

Fear of absorption on a German model into a unitary, all-Ireland state is a real and tangible political emotion on the part of unionists

which must be respected and accommodated in political discourse on this island and among those who aspire to Irish unity.

To offer a genuine partnership in the form of an Irish confederation which would demonstrably accommodate the desire of people in Northern Ireland to feel and to be British or Northern Irish or both and remain so is, I think, the only practicable and achievable form of Irish unity by consent.

I would add that while the amendment to Strand One agreed at St Andrews which accords the position of First Minister to the party getting the highest first preference vote may have been necessary to induce both the DUP and Sinn Féin to accept the rest of the Agreement, it had the effect of polarising the electorate – the DUP could make the argument that voting UUP or Alliance could make Gerry Adams or his successor the titular head of the North's executive. It was a polarising change which may have outlived its usefulness.

I would also envisage that compulsory power-sharing in Northern Ireland should be reviewed as part of a confederal arrangement. Ideally coalition government elected by a majority of parliamentarians based on a proportional representation system should become the norm on both sides of the border.

Compulsory power-sharing should give way to voluntary coalition power-sharing in any stable democracy.

That prospect should also be put on the table in any discussions on Irish unity.