

Chapter Ten: Home Rule for Northern Ireland?

In the last chapter it was pointed out that the one instance of home rule to emerge from the events of the early twentieth century was the Northern Ireland Parliament. Quite apart from its origins, it has always been controversial in its workings, accused of acting on behalf of the Unionist majority, manipulating electoral districts to promote unionist representation, and ensuring discrimination in housing and employment. For many in Northern Ireland, it was seen as a case where removing a higher level of government allowed a lower one to act in an irresponsible manner.

Currently the Republic of Ireland consists of 26 of the 32 counties of Ireland. The other six are often known as Northern Ireland or Ulster. Neither term is quite accurate. Historically Ulster consisted of nine counties, only six of which were separated in 1922 when Ireland was partitioned. Of the three that remained in the Republic, one of them contains the northernmost tip of the island. On any geographical definition, part of Northern Ireland is in the Republic.

In fact, geography reflects the lack of solidity, the unavoidable fluidity of what is called 'Northern Ireland.' Its border with the Republic is a meandering worm with no apparent logic to it. It wiggles its apparently unplanned way for nearly 500 miles through lakes, woods, parishes, farms and even homes. But it was designed originally to be the dividing line between the two areas of Home Rule within a single United Kingdom. Lloyd George, Prime Minister when the Irish Free State, as the 26 counties were called at the time, was brought into being, promised those opposed to the division that the six counties would prove to be unsustainable, and the meandering line seemed to reflect that conviction.¹ It ended up, however, as an international border between two countries,

1 See Roy Hattersley's biography of Lloyd George, *The Great Outsider*, ch. 33 'God Help Poor Ireland', pp. 530–546. Hattersley suggests that Lloyd George redrew the boundary be-

the Republic of Ireland and (to give it its full title) The United Kingdom of Great Britain and Northern Ireland, making it clear that Northern Ireland is an addition to Britain (however much Unionists in Northern Ireland wish to emphasise that they are British).

What lay behind the wiggling line of the border was the desire to create an area in which Unionists had a majority, something they clearly did not have on the island as a whole. The eventual creation of the six counties made it inevitable that there would be a substantial minority (one-third to two fifths) who would be opposed to the creation of Northern Ireland despite having to live there and who would wish to be united with the rest of the island. That clearly coloured the politics of this part of the UK in a way that didn't apply in the other devolved areas.²

Hence, whereas in the case of Wales and Scotland, or London and the city-regions of England, there was a majority desire for more powers to be conferred, in the case of Northern Ireland there was resistance to any conferral of additional powers. From the point of view of the Nationalists, the Unionists only wanted more powers if they could use them to discriminate even more against the minority. From the point of view of the Unionists, it would have the effect of detaching Northern Ireland further from Britain. The situation of Northern Ireland therefore makes it difficult to talk of it as one of the 'four nations' of the United Kingdom (a reference that had become familiar by 2022, for instance when discussing policies to combat COVID-19).³ One can see why Professor Bogdanor refers to 'three nations and a contested province'.⁴ Nationalists in Northern Ireland do not wish it to be a nation, because that would complicate its future as part of a united Ireland. Unionists would not want to be part of a separate nation, if being a nation was going to cause it to drift away from Britain and the rest of the UK. Technically, as we have seen, the UK is a

tween the Six Counties and the Irish /Free State in order to make the separation 'essentially temporary' (p. 543).

- 2 As Hattersley points out, Lloyd George seemed to think that this would be an arrangement which ensured that Northern Ireland's existence would be 'temporary'. The result was that 'temporary' meant more than a century and involved a lot of bloodshed North of the border, not to mention the Civil War in the South that followed the agreement.
- 3 See Bogdanor, *Beyond Brexit*, p. 178. He notes the recent tendency to talk of 'four nations' but argues that Northern Ireland is not a nation, despite the habit of critics of devolution to talk about 'four nations and a funeral'.
- 4 Bogdanor explains in *Beyond Brexit*, pp. 178–179, why it makes no sense to talk of Northern Ireland as a 'nation'.

United Kingdom of Great Britain and Northern Ireland. But for many Unionists the emphasis is upon their being British. The last thing they want is to drift into a kind of No Man's Land where they are neither British nor Irish, although this has always been a possibility. In Nairn's words, 'they were always, and they still remain, profoundly and embarrassingly different from the society they imagine they are a frontier of.'⁵ A Protestant U.D.I. remains the last resort that no one wants but which can never be entirely ruled out, 'an almost apocalyptic answer to British perfidy, the awesome threat at the end of the line.'⁶ Interestingly, there were hints of such a move after the collapse of the Sunningdale Agreement in 1974, when some Protestant paramilitary groups talked of an independent Northern Ireland and even spoke of Catholic participation in the Cabinet. It was a kind of power-sharing from within rather than one imposed from without, hinting perhaps that even Catholic treason would be more acceptable than British perfidy.⁷

It was the Unionists themselves who brought down the power-sharing Northern Ireland executive put in place by the UK government in the Sunningdale Agreement of 1973 and made it necessary to restore direct rule from Westminster. Unlike in Scotland and Wales, their priority was not for more power to be devolved to their 'nation,' but for their existence as part of the United Kingdom to be guaranteed. The approach was reflected in an election poster on behalf of the Unionists in the election of February 1974 which declared that 'Dublin is just a Sunningdale away.'⁸ In other words, the form of devolution being offered to Northern Ireland was likely to move it into the orbit of the Republic. The remit of the Council of Ireland, resurrected by the Sunningdale Agreement, was limited to tourism, conservation and animal health, but this was regarded by Unionists as the thin end of the wedge and indeed there were some on the Nationalist side who saw it in precisely those terms, such as SDLP (Social Democratic and Labour Party) Councillor Hugh Logue, who called it 'the vehicle that would trundle unionists into a united

5 Nairn, Tom *The Break-Up of Britain*, p. 224.

6 Nairn, Tom *The Break-Up of Britain*, p. 231.

7 See Nairn, *The Break-Up of Britain*, p. 244. The whole chapter, 'Northern Ireland: Relic or Portent?' is worth reading.

8 See the research paper for University College, Dublin written by P.J. McLoughlin and entitled "'Dublin is Just a Sunningdale Away?': The SDLP, the Irish Government and the Sunningdale Agreement.'

It can be read online at <https://researchrepository.ucd.ie/entities/publication/389d38ad-7e4e-40eb-88e0-469fc5257da4/details>

Ireland.⁹ Unionists also welcomed the fact that the end of Sunningdale and restoration of direct rule led to an increase in the number of Northern Irish MPs from 12 to 17. This reflected another approach to dealing with the problem of England not having its own Parliament unlike Scotland and Wales, one which suggests that devolved nations should have fewer MPs at Westminster. Instead of having MPs from the devolved regions voting on fewer issues than their English colleagues, one would simply have fewer MPs from the devolved regions. But it was also welcomed by Unionists who directed their efforts (successfully) towards more power at Westminster as the reward for less power at Stormont.

The significance of the Belfast Agreement

The breakdown of Sunningdale, the problems of direct rule and the prospect of 'Protestant U.D.I' demonstrate what a very important advance was made in Northern Ireland by the Good Friday agreement of 1998. Coming a generation after Sunningdale, there was a tendency to dub it 'Sunningdale for slow learners', but in important respects it was different.¹⁰ One key provision was that it made power-sharing in the Northern Ireland executive mandatory, ensuring that it would no longer be possible for the majority to impose its will on the minority.

The most important part of the agreement lay in its constitutional provisions. Effectively, it enshrined the view that the future of Northern Ireland was an issue for both parts of the island, Northern Ireland and the Republic. Indeed, the Good Friday agreement itself was subject to referenda on both sides of the border. Any further change to the status of Northern Ireland would also have to be subject to referenda both North and South of the border. Essentially, the Irish government recognised that without the consent of both sides a united Ireland would not come about, whilst the UK government accepted that with the consent of both sides it *would* come about. In this respect both governments, the UK and the Irish, were making an important concession. London accepted that the Irish Republic becoming a single 32-county island state was

9 He made these controversial comments in Trinity College, Dublin at the time of the Sunningdale Agreement.

10 The comment came from Séamus Mallon, Deputy First Minister of Northern Ireland from 1998–2001.

acceptable if a majority in both Dublin and Belfast wished it. The Irish Republic accepted – and amended its own constitution to this effect – that a united Ireland could not bypass the wishes of a majority in Northern Ireland.

The Good Friday agreement was a breakthrough after decades of killing on both sides. The brilliance of its design lies in the fact that it has not depended upon persuading one of the two sides that it is wrong or even on securing the sort of settlement where a compromise is reached because both sides give a little. It is more an agreement which allows both sides to proceed as if their position has been vindicated. This applies especially to the border. It has already been pointed out that the border between the six counties and the rest of Ireland wiggles its apparently unplanned way for nearly 500 miles through lakes, woods, parishes, farms and even homes. Vernon Bogdanor is probably correct to say that ‘the real border in Ireland is not a line on the map but a border in the mind,’¹¹ but the question is how to deal with it. Faced with two apparently irreconcilable positions, one of which insisted that the six counties must be part of a united Ireland and the other that they must not, the ‘solution’ in the Good Friday agreement was to make the border of as little significance as possible so that both sides could act as if their position was the real one. A Nationalist, whether or not she took advantage of the option of having an Irish passport, could move seamlessly around the island that she saw as her homeland with access to jobs and benefits like anyone else. A Unionist could tell herself that she was still part of the United Kingdom, a subject of the King, her local MP represented in the Westminster Parliament. The solution to two irreconcilable positions is not to come down on the side of one or the other but to find a way of being able to maintain both.

By and large this has worked. The violence has largely stopped, investment has begun to move in and power-sharing has proved – from time to time – successful. Stormont has received a steady increase of powers, including control of policing and criminal justice powers in 2006 and a right to vary the rate of corporation tax in 2014.¹² The problem is that there is such a fundamental divide between the two main parties, the Democratic Unionists and Sinn Féin, who dominate the politics of Northern Ireland (although the recent successes of the Alliance Party have demonstrated a few cracks in that edifice), that power-sharing sometimes breaks down, causing regular suspensions of the assembly. But for the most part there has been a generation of peace.

11 Bogdanor, Vernon *Beyond Brexit: Towards a British Constitution*, p. 243.

12 Bogdanor, *Beyond Brexit*, p. 183.

The trouble now is the aftermath of Brexit. The border has become much more significant as a border between two countries, one of which is a member of the EU and one of which isn't. The meandering line has been forced to become a demarcation point of significance, raising all the questions concerning border and customs checks and whether they can all be done 'electronically' that characterise discussions of trade between the two parts of the island today. Endless discussions are currently going on about whether and how to shift the border to the Irish Sea, so that Northern Ireland effectively has to follow the rules of the EU internal market and ceases to have the same trade rules as the rest of the UK.¹³ It is still unclear, with the assembly once again suspended until this problem is solved, what the outcome will be. It might seem as though the problem is a trade issue to which a sensible solution can be found (perhaps through modifying the so-called Northern Ireland Protocol) without endangering the future of peace in Northern Ireland. But such is the sensitivity over the border which the Good Friday agreement sought in its own way to dampen down and even marginalise rather than solve, that anything which forces people to focus once again on the line of separation between those on one side of the border and those on the other is bound to threaten peace.

Furthermore, Brexit has removed the broader perspective within which the 'Northern Ireland problem' could be viewed in European terms as a problem between two member states. The EU has plenty of sensitive borders which are a product of conflict, such as those between different parts of the former Yugoslavia, some of which are part of the EU (Slovenia, Croatia) and some of which are not. EU membership has helped to dampen tensions, if not to remove them. Croatian membership helped to resolve the dispute between Slovenia and Croatia over access to the Adriatic Sea. There are plenty of EU countries with minorities that were once part of other member states (for instance Hungarians in Transylvania, now part of Romania) and which campaign, for instance, over rights to their language and its use in schools. There are similar arguments from Russian speakers who make up a substantial part of the population of Latvia, not least because the Baltic states were actually part of

13 The whole issue continues at the time of writing with the so-called 'Windsor Framework' supposed to make the situation more acceptable to unionists. A BBC report in April 2023 gives a snapshot summary of developments. See <https://www.bbc.com/news/explainers-53724381>. However, the problem was clearly recognised five years ago by former Europe minister Denis MacShane. See *Brexit, No Exit*, ch.18: 'Brexit spells danger for Ireland and concern in Scotland', pp. 214–224.

the Soviet Union and not mere satellite states of it like the Hungarians or the Czechs. The EU also has to manage the border between the Turkish-occupied part of Cyprus and the rest. When problems arose over the question of how the border between the Republic and the UK could be managed after Brexit, members of the UK government were quick to study the border between the USA and Canada. They were less keen to study the practices of the Union from which they had just decided to depart. Yet the special arrangements for the border between independent Cyprus and the Turkish-occupied part of the island, or those in the Balkans between Croatia (which is inside the EU) and Bosnia (which is not), would arguably have been more helpful. From an EU perspective, the Irish border is just one of many 'little local difficulties', and one of the advantages of EU membership is that it provides a wider context within which people can set their particular concerns. That advantage has now been closed down by Brexit.

The Future of Northern Ireland

There are many reasons for supposing that the situation in Northern Ireland is the one that most threatens the continued existence of the United Kingdom, despite the narrowness of the result of the referendum over the future of Scotland in 2014. Most of the attention recently has been on trading arrangements. However, the problems over trade are arguably symptomatic of something that goes much deeper.

For one thing, it would be much easier for Northern Ireland to become part of the EU if it seceded from the UK than for Scotland to do so. Scotland would have to apply as a candidate country, requiring the unanimous consent of all the existing EU members – including Spain, which would be mindful of the possible repercussions for the independence movement in Catalonia. When the President of the European Commission was interviewed on British television shortly before the referendum on an independent Scotland José Manuel Barroso declared that it would be 'extremely difficult, if not impossible' for an independent Scotland to join the EU.¹⁴ Barroso (who retired a few months later)

14 He was interviewed on the Andrew Marr Show on 16th February. The comments (naturally welcome to the British government) caused quite a stir. See Corner, *The EU: an Introduction*, p. 43. The former DDR became part of a united Germany without requiring the unanimous approval of existing members, which would be necessary in the case of

probably exaggerated, but there would certainly be difficulties. Though the EU emphasises the need to protect minorities within its member states, it does not support them when they seek to secede. Northern Ireland, on the other hand, would not have this problem. It could simply become part of Ireland, just as the former DDR (*Deutsche Demokratische Republik*), as East Germany was called, became part of a reunified Germany in 1990, bypassing the need to apply as a candidate country.

The currency issue is also less problematic. Northern Ireland would automatically join the Republic as part of the eurozone. Scotland, on the other hand, would be faced with a difficult situation. It would have three choices. It might remain with sterling, which would be bizarre given the fact that it had just voted to be an independent country. It might receive some kind of dispensation to adopt the euro whilst outside the eurozone or even the EU (in the manner of Montenegro). It might adopt a new currency, perhaps the 'Scottish pound', before applying (as a new member state must) to become part of the eurozone. None of these options is simple.

For these reasons, we can see that if one ignores the bitter and possibly violent consequences of such a decision, it remains the case that it would be simpler for Northern Ireland to leave the United Kingdom and rejoin the European Union than for Scotland or Wales (which in any case voted to leave the EU in 2016) to do so. The attraction of being once again a part of the EU, which for Scots would involve all sorts of practical difficulties, would in the case of the Northern Irish be relatively straightforward.

Yet even though the easiest route back into the EU following secession from the UK would be the one taken by Northern Ireland, the Good Friday agreement provides important pointers towards a future constitution of the UK4. Northern Ireland shows how crucial an increased measure of autonomy for the members of the UK will be. Ironically, the very fact that Northern Ireland is the likeliest part of the UK to leave has already meant accepting a degree of autonomy for Northern Ireland which does not exist elsewhere.

In 2017 the UK Supreme Court unanimously held that the consent of Northern Ireland voters was not required to leave the European Union. It had just decided in the Miller case that the consent of the UK Parliament was necessary in order to leave the EU, a majority decision that earned it brickbats of

any applicant country. There was talk at the time of a possible UK veto, just as there is talk now of a possible Spanish veto to an application from an independent Scotland. A re-united Ireland, like a reunited Germany, could avoid any possible veto.

a 'the judges versus the people' kind in the press.¹⁵ Yet it did not see why this principle should be extended to the parliaments based in Edinburgh, Cardiff and Stormont (Wales, as said, voted narrowly to leave the EU). Devolution had made it perfectly clear that matters of foreign policy were reserved to the UK Parliament alone.

This was an understandable position, and yet the Good Friday Agreement had taken the decision on the future of Northern Ireland out of the hands of the UK as a whole and had made it a decision in a referendum for the two sides of the Irish border alone. If the continuation of Northern Ireland as part of the United Kingdom is a matter in which Northern Ireland is effectively allowed a veto on its future, shouldn't it have been allowed a veto on its continuing to be part of the European Union? The logic of Good Friday is that decisions on the future of this 'nation' should be subject to the agreement of both the Irish Republic and Northern Ireland. In other words, both could exercise a veto on the agreement. Surely it would make sense to apply the power of veto to other decisions with profound implications for Northern Ireland, such as membership of the EU. It may be too late to advance that particular argument now, but it is not too late to point out that veto powers for the devolved bodies should be part of any future constitutional changes.

The provisions in the Good Friday agreement anticipate the form which a degree of shared sovereignty might take, both in a future united Ireland and within the United Kingdom. The first of these two is being discussed in the Irish Republic, where a new Citizens' Assembly may be asked to look at the question of a fresh border poll on re-uniting the island. Though in the summer of 2022 the Irish foreign minister declared that such an assembly was not 'on the radar,' and even less so a referendum on the issue, it has not been ruled out further down the road.¹⁶

Just as it was recognised in Northern Ireland that only a radical form of power-sharing could make sense in the context of administering the North, so it is recognised in the Republic that only a radical form of power-sharing could

15 See Keating, *State and Nation in the United Kingdom*, p. 69.

16 The Irish Foreign Minister Simon Coveney made the remark after elections to the Northern Ireland Assembly had given Sinn Fein more seats than the DUP. On the other hand, as Coveney pointed out, the party that made the most gains in the election was the Alliance Party who tried to steer a middle ground. See <https://www.breakingnews.ie/ireland/coveney-says-citizens-assembly-on-border-poll-not-even-on-the-radar-1301695.htm>

make sense in the context of a United Ireland. Neale Richmond, TD, a Fine Gael politician in the Irish Republic, presented a paper *Towards A New Ireland* at Sidney Sussex College, Cambridge University, in April 2021, which described itself as setting out a vision ‘for a new political system that would retain elements of the power-sharing dynamic in Stormont’.¹⁷ It proposed to use some of the ideas for power-sharing in the North of Ireland for power-sharing in a United Ireland. Rather than people from Northern Ireland just entering into the existing Irish state, a new Ireland would be created with power-sharing at its core. A devolved administration would continue in Belfast for 10 years, in parallel to an all-island parliament in Dublin. In a manner that replicated power-sharing in the North, this parliament would elect a speaker and deputy speaker, one of whom would come from Northern Ireland, with the same principles applying to the chairs and vice-chairs of parliamentary committees. If Sinn Fein can sit down with the Democratic Unionist Party in the North of Ireland, then could it not do so in a United Ireland?

Most significantly for the future of the Isles as a whole, the second area in which the Good Friday agreement is important concerns the form power-sharing might take inside the UK. Ironically, given the way in which the English constantly described the EU as encroaching upon national sovereignty, what could be learned from the EU in this instance is the point of allowing all members of the UK Union, small and large, a power of veto in certain policy areas. The Good Friday agreement referred to the UK and the Republic of Ireland as ‘partners in the European Union’. Constitutional reform might allow the ‘four nations’ to act effectively as partners in a British Union. However, this will only be possible if the members of the British Union have powers that at present they lack, such as the power of veto where vital constitutional matters are concerned.

Furthermore, the Good Friday agreement facilitates power-sharing in a way that the UK has often presented itself as constitutionally averse to. The UK declares its preference for the so-called First Past the Post System and its aversion to coalitions.¹⁸ The system in Northern Ireland is an enforced coalition.

17 The paper appeared in *The Political Quarterly*, Vol 94, No 1 (Jan/March 2023), pp. 115–121. <https://www.finegaele.ie/app/uploads/2021/04/Towards-a-new-ireland-Neale-Richmond-2021.pdf>

18 See Bogdanor, *Beyond Brexit*, pp. 190–198. Bogdanor points out that ‘Coalition government in Northern Ireland is not, as is normally the case in parliamentary systems, a voluntary choice, but is required by statute’ (p. 191).

The first minister comes from the largest party (which used to be the Democratic Unionist Party and is now Sinn Fein) while his or her deputy comes from the second largest party (currently the Democratic Unionist Party). At a time when members of the two main parties in the Republic, Fianna Fail and Fine Gail, were considering whether they could possibly sit down with members of Sinn Fein, such collaboration was being forced on the Northern Ireland executive by the Belfast Agreement. As pointed out above, the structure has had its difficulties (not least a three-year suspension of Stormont from 2017–2020), but it represents an attempt to bridge apparently uncrossable divides which might be compared to the coalition-building approach favoured in many of the countries of the European Union and in some of its own institutions (for instance the Parliament). It could therefore be that a Council including the whole of the UK, or even one encompassing both the Isles and including the Republic, could be managed on this basis. Indeed, there is already such a body established as part of the Belfast Agreement, a British/Irish Council (and a British/Irish Inter-Governmental conference), comprising not only the British and Irish governments but those of Scotland, Wales and the so-called ‘Crown dependencies’, the Isle of Man, Jersey and Guernsey. Set up to promote ‘the harmonious and mutually beneficial development of the totality of relationships among the people of these islands,’ the Council could be the launching-pad for a serious discussion of how the four nations and two nation-states might give constitutional form to that ‘harmonious and beneficial development.’¹⁹

The EU has no difficulty being made up of 27 states some of which are large (Germany has 80 million inhabitants) and some of which are small (the smallest, Malta, has a population of 400,000, 200 times smaller than that of Germany). Its institutional structure gives added weight to smaller countries in the voting systems adopted (so-called ‘degressive proportionality’), in the rotating six-monthly presidency, in the provision of one commissioner per member-state whatever its size and in the need for unanimity on many key issues such as admitting new members or agreeing a new treaty.

It is clear that if UK governments wanted to devise a constitution for a British Union influenced by the structures of the European Union, they would have to give their own ‘member nations’ far more autonomy than they give them at present. Yet their image of the EU is of an oppressive power threatening national sovereignty which had to be escaped before the UK became a

19 See its website at <https://www.britishirishcouncil.org>. As Bogdanor points out, it has no member from England (*Beyond Brexit*, p. 198).

mere region of an overweening superstate. Hence the irony of the fact that if a constitutional settlement is to be achieved and the break-up of the UK avoided, Westminster needs to secure the autonomy of its member nations in the way the EU secured the autonomy of its own member states. Such an irony is naturally hard to bear for those who pulled the UK out of the EU claiming that they were being turned into the powerless victim of a centralised EU machine.

The relation of the UK to the Republic of Ireland

The last chapter pointed out that the failure to achieve a devolution settlement for Ireland had a considerable impact upon attitudes towards devolution (or Home Rule All Round as it was called) in Westminster. The creation of the Irish Free State was part of a process of winning independence in stages. At first it was effectively another dominion, a constitutional monarchy with George V as its King and a governor-general, whose approval was needed for whoever was elected prime minister to take office. It was a halfway house, more than home rule but less than full sovereignty. It needed the Statute of Westminster of 1931, which restricted the rights of the UK to legislate for its dominions, in order to acquire full sovereignty for itself by effectively neutering remaining powers like that of the governor-general and appeals to the privy council. It made use of the crisis over Edward VIII's abdication to abolish the oath of allegiance to the Crown (George VI became 'King of Great Britain and Northern Ireland') and through the External Relations Act to deny the UK any control over its foreign affairs. In 1938 it regained control of three treaty ports which had been occupied by the Royal Navy since 1922 and which on the grounds of strict neutrality it refused to make available to the UK during the Second World War. Finally, in 1949, it left the Commonwealth, so that any residual influence of the 'mother country' and its monarch as 'Head of the Commonwealth' was finally done away with.

However, a timeline such as this can be misleading about the relationship between the two nations. The Republic of Ireland is, of course, an independent nation-state, just as France and Germany are independent nation-states. It has its own foreign policy which means that it has chosen not to be part of NATO and yet to remain part of the European Union. Yet the impact of its former ties with what is now the UK remains and is woven into the constitutional arrangements of both nation-states. As Hobsbawm points out, 'the independent Irish

Republic, while insisting on its total political autonomy from Britain ... in practice accepts considerable mutual involvement with the United Kingdom.²⁰

Between the UK and the Republic there exists a common travel area which means that people in the UK can travel freely to the Republic and vice versa, seeking employment and receiving benefits, access to health care and voting rights. EU citizens lost this right after Brexit, but the UK made a specific exemption for members of the Irish Republic. In a similar manner, even when Ireland left the Commonwealth in 1949, Parliament treated her citizens as Commonwealth citizens with free right of entry to the UK. When curbs were introduced on immigration from the Commonwealth in 1962, the Republic was exempted from them. Ireland's special status preceded the time when it and the UK entered the EEC/EU and will continue after Brexit.²¹ The UK allows a degree of inter-governmental cooperation in the case of the Republic of Ireland which it has rejected in the case of other EU nations. One arrangement from which it was determined to seek an opt-out when inside the EU, the Schengen agreement on visa-free travel, was effectively applied to the one neighbour with which it had a land border.

The Good Friday Agreement contained provisions for North-South cooperation and at the very least a consultative role for the Republic. A consultative role means that there is nothing binding in these arrangements, but certain other provisions in the agreement suggest that cooperation may have to go further than this. People in Northern Ireland can choose whether to have British or Irish citizenship or both. If they choose Irish citizenship, they are EU citizens and should be covered by the provisions of the EU Charter of Fundamental Rights, which the UK has not incorporated into UK Law. They would therefore seem to have rights which they cannot exercise in practice. It is difficult to see how this problem can be resolved without some kind of All-Ireland Charter of Rights about which there are ongoing discussions between the UK and Irish governments. Whatever the emphasis put upon the merely 'consultative' links between the two parts of the island, the connections between them, whether in relation to tourism sport, environmental management or even trade union and banking arrangements, are strong enough to make joint decision-making in some areas inevitable. Indeed, it should be borne in mind how many Unionists support these links without wanting a United Ireland.

20 Hobsbawm, *Eric Nations and Nationalism since 1780*, p. 188.

21 See Bogdanor, *Beyond Brexit*, pp. 238–241.

The focus in the early 2020s is still the so-called 'Northern Ireland protocol' and the problems of maintaining seamless trade between the UK and the Republic when one country is inside the single market and the other is not.²² Occasionally recriminations fly between both sides. But it is worth standing back from this and considering the wider picture. One important point concerns the general reliance of the Republic on trade with the UK. This is important, but less so than it used to be. When the Irish Free state came into existence a century ago, 99% of its exports went to the UK. By the time the EEC was formed the figure was around three-quarters. By the time the Republic joined the EEC it was still over one half, but by the time of the Brexit vote it was around one-quarter. That is still a significant amount, but the Irish Republic has a much more diversified economy, one much less dependent on the UK than was the case when they both joined the EEC half a century ago.²³ One should therefore avoid presuming that the Republic's trade is exclusively with its Northern neighbour.

The second point concerns the continuing ties between the two despite their increasing economic divergence. The fact is that the UK and the Republic of Ireland, two separate nation-states, with very different foreign and defence policies and different currencies, behave towards each other as if they were both part of the European Union. There may be a problem with the freedom of movement of goods between the two, but the freedom of movement of people has been maintained.

In certain key areas the UK has felt constrained to continue to have the sort of relationship that the two countries would have if both remained part of the EU – indeed a closer one even than that, given the commitment to the common travel area. They may well have to reach a common position on rights, whether in terms of the EU Charter or the European Court of Human Rights

22 Now modified by the so-called Windsor Framework. The Egmont Institute based in Brussels provided a short summary of the framework in April 2023, <https://www.egmontinstitute.be/the-windsor-framework/> but it still has to be seen whether it can restore effective government in Northern Ireland.

23 Figures for the 20th Century come from John Bradley's 'History of Economic Development in Ireland, North and South.' For later figures see country profiles from organisations like the World Bank. See the Economics Observatory report which actually traced the level of dependence on the UK since the Republic was formed a century ago. <https://www.economicsobservatory.com/irelands-economy-since-independence-what-lessons-from-the-past-100-years>

in Strasbourg. The UK has recently had difficulties with this body, despite being a founder member of the Council of Europe, which brought the court into being. Current considerations of whether to introduce a British Bill of Rights to replace the UK Human Rights Act, triggered by the European Court of Human Rights' ruling on the illegality of the UK government's plans to deport certain asylum seekers to Rwanda, must continue to bear this Irish perspective in mind. It is all too easy for UK governments, when they hear about rulings from Strasbourg, to rush to the conclusion that 'foreign judges' are interfering in 'UK affairs.' They need to bear in mind that the minority community in Northern Ireland remembers how their rights lay unprotected by UK governments until protests inspired by the American civil rights marches of the 1960s began to change things. They can clearly perceive that the issue of rights needs to be separated from nationality. The 'Irish question' helps to ensure that this perception will not easily be lost now.

Conclusion

This chapter sought to show that ironically, given the fact that the creation of the Irish Free State was one of the major factors in the failure of Home Rule All Round to succeed, it is what has happened in Northern Ireland that points to a possible way forward towards an effective settlement that might be able to preserve the UK. Devolution to other parts of the United Kingdom arguably began as a way of trying to ensure that they didn't follow the Irish into seceding. Devolution to Northern Ireland under the Good Friday agreement may help to prevent such a secession if certain features of that agreement, in particular the arrangements involving power-sharing, are taken seriously enough to be replicated elsewhere.

The next two chapters will consider in more detail what constitutional arrangements might be adopted by a UK Union. It will pay particular attention to a proposal from Wales, which perhaps because it voted to leave the EU and because support for independence (though growing) is clearly a minority position, has shown a great deal of interest in what constitutional arrangements might hold the UK together in the future.

