

POBLACHT NA H EIREANN.

**THE PROVISIONAL GOVERNMENT
OF THE**

IRISH REPUBLIC
TO THE PEOPLE OF IRELAND



**UNITED
IRELAND
HUMAN RIGHTS
AND INTERNATIONAL
LAW**

FRANCIS A. BOYLE

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HUMAN RIGHTS
AND
INTERNATIONAL LAW

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CHAPTER EIGHT

DESIGNING UNITED IRELAND

This chapter is intended to provide some preliminary suggestions for the design of United Ireland from the perspective of international law and human rights. Obviously it is not intended to deal with all the weighty complications that would surround the establishment of United Ireland. These could only be decided by all of the people living on the entire Island of Ireland—the one and only self-determination unit for Ireland—exercising their right of self-determination under international law and human rights. Rather, I intend to generate some ideas for all Irish people now to consider, discuss, debate, criticize, reject, and improve upon concerning how to establish what I am here, for convenience, calling United Ireland, in the not-too-distant future. It is offered as an impressionistic first-cut at United Ireland.

Creating a New State

Let me start with the preliminary observation that United Ireland should not be established by having the current Republic of Ireland consisting of only 26 counties simply gobble up and incorporate the remaining 6 counties that are currently called Northern Ireland together with its inhabitants. I respectfully submit that Protestants living in Northern Ireland would vigorously and rightfully object to being engulfed by and annexed into the State currently known as the Republic of Ireland. Rather, we all need to start with a *tabula rasa*, a blank slate.

This can be done by all the people currently living on the Island of Ireland deciding to set up a completely new State that I will hereinafter call United Ireland (U.I.) consisting of all 32 counties in order to distinguish

it from the currently existing twenty-six county Republic of Ireland (R.O.I). **Let all the people living on the Island of Ireland come together and design and create a completely new State!** This United Ireland would be the Successor State in Law to as well as the Legal Continuator of (1) the Republic of Ireland; (2) the 1916 Irish Republic; and (3) the 6 counties on the Island of Ireland known today as Northern Ireland.

In this manner United Ireland would carry on all three different legal entities and political traditions on the Island of Ireland today. Not one of these three legal entities and political traditions would be extinguished, but rather all three would be merged into and continued by the new State of United Ireland. Thus, by means of establishing United Ireland in this way, proper consideration and respect would be afforded to Protestants and to the Protestant tradition in Northern Ireland.

Naming the New State

I doubt very seriously that Protestants would want to live in a state called the Republic of Ireland, let alone the Irish Republic. The precise name of the new state does not really matter because it can always be given a republican system of government by means of its constitution without officially denominating the new state as a Republic. For example, the United States of America is a Republic without officially calling itself by that name.

Here I have suggested United Ireland along the lines of the United Kingdom: United Ireland resulting from the union of the Republic of Ireland and Northern Ireland replacing United Kingdom consisting of Great Britain and its colonial appendage, Northern Ireland. United Ireland for short. At the end of the day the Irish People will have to decide for themselves what to name their new state by means of a referendum. At that time, perhaps the best that could be agreed upon is simply to call their new state both Ireland and Eire—since it will be officially bilingual. I have chosen to use United Ireland in this book as a symbolic place-holder pending that day.

State Succession

As the Successor in Law to and the Legal Continuator of the Republic of Ireland, United Ireland would take R.O.I's place as the contracting party to all international treaties, agreements, and assurances currently concluded in the name of the Republic of Ireland. This State Succession and Continuation would include R.O.I's membership in all international organizations and especially in the entirety of the United Nations System and the European Union System. Hence there would be

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no legal discontinuity whatsoever when it comes to the international legal personality and democratic representation for all the people living on the Island of Ireland. But it would be more than just a change of names from Republic of Ireland to United Ireland. United Ireland would be a completely new State under international law and practice that would be designed and created by all the people living on the Island of Ireland exercising together their fundamental right to self-determination.

Human Rights

Thus, United Ireland would also automatically succeed the Republic of Ireland as a contracting party to all the human rights treaties to which the Republic of Ireland is currently a contracting party, including and especially the European Convention on Human Rights. Furthermore, since all people living in Northern Ireland today are entitled to the benefits of all the human rights treaties to which the United Kingdom (U.K.) is currently a contracting party, United Ireland must become a contracting party to all U.K. human rights treaties that the Republic of Ireland is not currently a contracting party to. This is because the human rights guaranteed by these U.K. human rights treaties have already been vested in the people currently living in Northern Ireland. They cannot and must not be deprived of these, their basic human rights.

In this manner the Protestants currently living in Northern Ireland would continue to benefit from all human rights treaties to which the United Kingdom is currently a contracting party. In addition, all the people currently living in the Republic of Ireland would also benefit by United Ireland becoming a contracting party to U.K. human rights treaties to which the Republic of Ireland is not a contracting party. Furthermore, then all of these human rights treaties must be specifically enacted into domestic law by the Parliament of United Ireland so that any person living on the Island of Ireland could go into court and get his or her basic human rights enforced directly under any one or more of these treaties.¹ In this manner, United Ireland would be a “win-win” solution for all the people living on the Island of Ireland when it comes to protecting and promoting their basic human rights.

Religion

One of the most fundamental human rights of all is the right to freedom of religion. Article 18 of the Universal Declaration of Human Rights (1948) has specified this basic human right by means of the following language: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others

and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” The Constitution for United Ireland should expressly incorporate *in haec verba* the entirety of the Universal Declaration of Human Rights, and provide that the U.D.H.R. is self-executing as a matter of domestic law enforcement by all judges and government officials. The U.D.H.R. should become the Bill of Rights for the United Ireland Constitution along the lines of the first Ten Amendments to the United States Constitution—America’s Bill of Rights.

It is undeniable that the Republic of Ireland historically has been and currently still is a confessional state in favor of Catholicism. Therefore extra protections must be taken to guarantee that Protestants living in United Ireland will be able to believe and worship and practice their religion as they see fit. In other words, United Ireland must not be a confessional state.

To accomplish this objective, I respectfully recommend that the Constitution of United Ireland expressly incorporate the two Religion Clauses of the First Amendment to the United States Constitution: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” The (non)-Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution have done an excellent job of preserving and protecting and promoting a multitude of religions, and religious beliefs, and religious practices, in an American Society that identifies itself as predominantly Christian. These two Religion Clauses drawn from the First Amendment to the United States Constitution could likewise serve to preserve, protect, defend, and promote Protestant beliefs and practices as well the Protestant tradition in United Ireland.

Finally, out of an excess of caution, I would also recommend that the United Ireland Constitution incorporate the following language taken from Article VI, Clause 3 of the United States Constitution: “...no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” These three Religion Clauses of the United States Constitution have done an outstanding job at promoting religious diversity in the United States of America. I submit the same can be done for United Ireland with its long-standing Protestant, Catholic, and Jewish religious traditions and heritages. The same principle would also hold true for the other religious minorities in United Ireland as well as for secularists.

Language

In the preceding section I argued that we must bend over

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backwards to protect the religious rights of Protestants living in United Ireland. By the same token, we also need to guarantee the basic human right of people to speak the Irish language in United Ireland. This is because of the long and sordid effort by Britain to extirpate the Irish language. Therefore, the Constitution for United Ireland should make the State officially bilingual: Irish and English. It could be similar to the constitutional arrangement in Canada where both English and French are the official languages. The practical details would have to be worked out and implemented by the Parliament of United Ireland.

Property

Most of the land in Northern Ireland was stolen by Britain from the indigenous Irish inhabitants. Therefore Protestants living today in Northern Ireland might fear for good cause that their real property and their personal property could be at legal risk in United Ireland. Therefore in order to calm their fears, I would respectfully recommend that the Constitution for United Ireland incorporate language taken directly from the Fifth Amendment to the United States Constitution along the following lines: "No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." This language should be sufficient to copper-fasten their interests in real property and in personal property for Protestants living in United Ireland.

Citizenship, Nationality, and Residence

Another protection that could be afforded to Protestants in Northern Ireland would be for them to be able to retain their British citizenship while living in United Ireland. They would also retain their British passports and could have the British Parliament guarantee as a matter of domestic law their right (and that of their descendants) to reside in Britain forever. The British Parliament should also extend the same rights to Catholics and their descendants living in Northern Ireland on grounds of non-discrimination. Moreover, the British Parliament could enact legislation to permit British citizens living in United Ireland to vote in British elections by means of an absentee ballot as well as to be elected to public office in Britain.

Protestants (and Catholics) living in Northern Ireland should also be entitled to claim citizenship in United Ireland and thus become dual nationals if they so desire. On the other hand, Northern Ireland Protestants and their descendants (as well as Catholics and their

descendants) should not be forced to accept Irish citizenship or nationality in United Ireland if they do not want to. Nevertheless, such individuals (and their descendants) should still retain their right of permanent residence in United Ireland.

To be sure, if such individuals choose to remain living in United Ireland as exclusively British citizens, then they would be bound to obey the laws of United Ireland—just as is true for permanent residents living in any other country. Nevertheless, they would still be entitled to invoke all the protections of the international and domestic human rights regime outlined above. Moreover, since they are currently residents on the Island of Ireland, such individuals should have the basic right to participate in the drafting of a new Constitution for United Ireland that would contain within itself a Bill of Rights protecting all the people who live in Ireland irrespective of citizenship and nationality, let alone religion and language.

Furthermore, under that new Constitution, such individuals should be permitted to vote in whatever type of Irish elections they so desire on the basis of their qualifications as permanent residents in United Ireland. In this way, communities living in today's Northern Ireland that consist of a majority of Protestants could continue to maintain majority political control over local, municipal, and county-wide governmental bodies in United Ireland, subject to the non-discrimination regime mentioned above. Indeed, this new Irish Constitution should accord such permanent residents of United Ireland all of the legal, political, and constitutional rights of Irish citizens without any distinction. These rights should include those of full and equal participation in voting, law-making, governance, administration, adjudication, public office-holding, education, etc. Of course such individuals would remain free to exercise or not exercise any one or more of these fundamental rights guaranteed to them by the new Constitution. But for all functional purposes, there should be no constitutional or legal or human rights distinctions whatsoever drawn between these Protestant (and Catholic) permanent residents and citizens in United Ireland.

No point would be served here by continuing to spell out the multifarious constitutional, legal, political, and human rights protections that could be designed for Protestants—with their active participation—who would be living in United Ireland. Suffice it to say that enormous progress can be made in this direction by breaking down and distinguishing the rights pertaining to (1) citizenship; (2) nationality; (3) residence; (4) voting; and (5) governance in United Ireland. Fortunately, all these questions will be made incredibly easy to handle and therefore quite flexible to negotiate because both Britain and Ireland are today members of the European Union (E.U.) and thus bound by the various

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protections and privileges afforded to citizens of E.U. member states without discrimination.

A Template for United Ireland's Constitution

Obviously this is neither the time nor the place to draft a Constitution for United Ireland that would cover all the basic details necessary to establish this new state. But I would like to suggest a model constitution for all the Irish people to consider in drafting United Ireland's Constitution. Britain does not have a written constitution. Protestants would rightly object to modeling the United Ireland Constitution on the Constitution for the Republic of Ireland.

Therefore, with all due respect and humility, as a compromise alternative, I would like to suggest that the Irish consider the Constitution for the United States of America as Amended— with all its defects and faults—as a template to be used for drafting the United Ireland Constitution. In 1787 the U.S Constitution emerged out of a Protestant political culture, heritage, and philosophy. Since then, comparatively speaking, the U.S Constitution has done a pretty good job of promoting a multiethnic, multi-religious, multiracial republic. It can do the same for United Ireland.

Truth and Reconciliation

In post-Good Friday Northern Ireland there has been some talk about establishing a Truth and Reconciliation Process. I respectfully submit that these intimations are, and such discussions would be, premature. How could there possibly be any degree of "truth," let alone "reconciliation," while Britain continues to occupy even one square millimeter of Ireland? The institution of a Truth and Reconciliation process at this time would simply constitute a white-wash, a cover-up, and an immunization of the long history of British crimes against the Irish in Northern Ireland, in the Republic of Ireland, and even in Britain itself. For this reason, a Truth and Reconciliation process at this time would only significantly delay Britain's departure from Ireland. Why would we Irish want to do that prior to the British departure from Ireland?

That being said, the establishment of a Truth and Reconciliation process should be an integral component for the foundation of United Ireland. The Constitution for United Ireland could call for the creation of a Truth and Reconciliation Commission. Thereunder, any person could appear before the Commission and admit to conduct involving acts of violence against persons and property in Ireland and Britain that had a

political motivation behind them, and then answer any questions the members of the Commission might have about them. The Commission would then be authorized and directed to grant full-scale political and legal immunity—both criminal and civil—for all the conduct admitted before it. This immunity would be constitutionally valid and binding and obligatory for all legal and political purposes throughout United Ireland.

In addition, the British Parliament would also have to adopt domestic legislation granting both political as well as civil and criminal legal immunity for any conduct admitted to before United Ireland's Truth and Reconciliation Commission for which the latter has granted immunity. Thus, even British citizens living in Britain could appear before the United Ireland Truth and Reconciliation Commission, admit their activity, and receive full political and legal immunity that would be effective in both United Ireland and Britain. With the establishment of United Ireland it would be critical, and indeed possible, to promote Truth and Reconciliation between Protestants and Catholics living in United Ireland, as well as Truth and Reconciliation between the Irish People and the British People, as well as Truth and Reconciliation between United Ireland and Britain.

State Responsibility

Of course the above-described Truth and Reconciliation process would only deal with personal legal responsibility for individual human beings still living. It would not affect the obligation by Britain to pay reparations for genocide to United Ireland for the Irish Hecatombs as detailed in chapter 1 and for the other atrocities that Britain has inflicted upon Ireland and the Irish over the centuries. This is a matter of State Responsibility incumbent upon Britain under international law. Satisfaction of this issue of State Responsibility will still have to be established by means of negotiation, arbitration, adjudication, etc. between Britain and United Ireland as required by articles 2 (3) and 33 of the United Nations Charter.

Conclusion

In this manner, with the establishment of United Ireland both Protestants and Catholics living on the Island of Ireland as well as the Irish People and the British People should be able to draw a line beneath the past nine centuries of struggle and strife and genocide in order to move forward from there as equals. But this cannot possibly happen until Britain finally leaves Ireland *in toto*. Furthermore, when Britain finally leaves its very first colony in Ireland, and if the British People

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reconcile with the Irish People as indicated above, then perhaps it might be possible for Britain to reconcile with its other genocidal and colonial victims around the world in a similar manner.

In any event, the proverbial handwriting is on the wall for the illegal colonial settler enclave known today as Northern Ireland for all the world to see but the willfully blind. United Ireland is an historic inevitability. If not tomorrow, then certainly within a generation. We Irish must make the prospect of United Ireland as attractive and non-threatening as possible to our Protestant brothers and sisters living in Northern Ireland while at the same time remaining true to our Republican values and principles.

Endnotes

- 1 *See generally* Irish Human Rights Commission, Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland (March 2011).

ABOUT FRANCIS A. BOYLE

Superlative academic credentials

- J.D. degree *magna cum laude* and A.M. and Ph.D. degrees in political science from Harvard University.
- 1976-78 a teaching fellow at Harvard and an associate at its Center for International Affairs.
- Presently tenured Professor of Law at the University of Illinois, Champaign where he teaches public international law, international human rights law, jurisprudence, and a seminar on the constitutional law of U.S. foreign affairs.

Wide-Ranging International Experience

- Served on the Board of Directors of Amnesty International
- **Drafted the Biological Weapons Anti-Terrorism Act of 1989, which is the implementing legislation for the 1972 Biological Weapons Convention.**
- Defended Bosnia-Herzegovina in the International Court of Justice
- Was Vice-president of the Human Rights Research Foundation
- Served as consultant to the American Friends Service Committee
- Served as Legal Advisor to the Palestinian Delegation to the Middle East Peace Negotiations from 1991 to 1993.

Impressive Publications

- *Defending Civil Resistance Under International Law* (Transaction Books) has been used in numerous foreign policy protest trials.
- *World Politics and International Law* (Duke:1985) (Duke University Press: 3d prtg. 1995). **Designated An Outstanding Academic Book of 1985-86" in the field of Political Science by *Choice Magazine***
- *Future of International Law and American Foreign Policy*
- *Foundations of World Order: The Legalist Approach to International Relations 1898-1921* (Duke University Press, 1999)
- *Bosnian People Charge Genocide* (Aletheia Press:1996)
- *The Criminality of Nuclear Deterrence* (Clarity Press, 2001)
[German edition, 2009]
- *Palestine, Palestinians and International Law* (Clarity Press, Inc., 2003)
[Arabic edition, 2004]
- *Destroying World Order* (Clarity Press, 2004)
[Arabic edition, 2005]
- *Biowarefare & Terrorism* (Clarity Press, 2006)
[French edition, 2007]
- *Breaking All the Rules* (Clarity Press, 2007)
- *Protesting Power: War, Resistance and Law* (Rowman and Littlefield, 2007)
- *Tackling America's Toughest Problems* (Clarity Press, 2009)
- Author of numerous articles, prefaces, contributed chapters in academic and popular journals worldwide



Author Francis A. Boyle (right) with Sean MacBride, S.C. Foreign Minister for the Republic of Ireland, Nobel Peace Prize Laureate, and Chief of Staff of the Irish Republican Army

Ireland • Law • Human Rights

During the past three decades, international legal expert Francis A. Boyle has dealt with some of the most difficult problems created by Britain's continued military occupation of six northeast counties in Ireland. In so doing, he along with other Irish Americans engaged the formidable Irish American domestic lobby in support of the Irish resistance.

This book addresses some of the most important aspects of their historic campaigns—the struggle to prevent deportation of Irish freedom-fighter Joe Doherty, the protest against the U.S.-U.K. Extradition Treaty of 2006, the effort to engage U.S. multinationals in implementing the MacBride Principles to roll back discrimination against Catholics in Northern Ireland.

But most significantly, Boyle makes the legal case for viewing the horrific Irish "Potato Famine"—the Irish *Hecatombe*—as a result, not of laissez-faire economic policy, but of intentional British genocide.

This is the definitive book on all legal/political/human rights aspects of the Irish conflict, including Britain's international legal obligation to decolonize Northern Ireland, and going forward, a legal and human rights framework for establishing a United Ireland where all Irish can live in peace with justice for all, irrespective of their differences.

United Ireland, Human Rights, and International Law is required reading for Irish Americans, people living in Ireland, and the Irish Diaspora around the world.

FRANCIS A. BOYLE is a leading American expert in international law. He was responsible for drafting the Biological Weapons Anti-Terrorism Act of 1989, the American implementing legislation for the 1972 Biological Weapons Convention, served on the Board of Directors of Amnesty International USA and represented Bosnia-Herzegovina at the World Court. He served as legal adviser to the Palestinian Delegation to the Middle East Peace Negotiations from 1991 to 1993. In 2007, he delivered the Bertrand Russell Peace Lectures. Professor Boyle teaches international law at the University of Illinois, Champaign and is author of, inter alia, *World Politics and International Law*, *The Future of International Law and American Foreign Policy*, *Foundations of World Order*, *The Bosnian People Charge Genocide*, *The Criminality of Nuclear Deterrence*, *Palestine, Palestinians and International Law*, *Destroying World Order*, *Biowarfare & Terrorism* and *Tackling America's Toughest Questions*. He holds a Doctor of Law Magna Cum Laude as well as a Ph.D. in Political Science, both from Harvard University.



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