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The Shamrock and the Crown: A Historic Analysis of the Framework Document and Prospects for Peace in Ireland

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Cover Page Footnote

J.D., Florida State University College of Law, expected May 1996; M.A. in International Affairs, Florida State University, expected May 1996; B.A. in History, New College, 1993; Editor-in-Chief, Journal of Land Use & Environmental Law. Upon graduation will join the firm of de]a Parte, Gilbert & Bales, Tampa, Florida, as an associate. The author wishes to dedicate this article to his parents, Mario and Annamarie Christaldi.

THE SHAMROCK AND THE CROWN: A HISTORIC ANALYSIS OF THE FRAMEWORK DOCUMENT AND PROSPECTS FOR PEACE IN IRELAND

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On February 23, 1995, the *Irish Times* reported the signing of the "Framework Document," an Anglo-Irish declaration seeking "to remove the causes of conflict, to overcome the legacy of history and to heal the divisions" in Ireland.¹ The United States has taken an active role in promoting peace in Ireland. Former United States President Jimmy Carter met with Protestant leaders in Northern Ireland² on

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1. *The Framework Document*, reprinted in Reuter Newswire, Feb. 23, 1995, available in Westlaw, INT-NEWS database. The full text of The Framework Document is reprinted as Appendix I of this article.

2. Britain includes the three mainland areas of England, Scotland, and Wales, as well as islands such as the Channel Islands. The nation currently comprised of England, Scotland, Wales and Northern Ireland is correctly titled the United Kingdom of Great Britain and Northern Ireland. For purposes of this article's historical discussion this nation will be referred to as England because the primary political and social traits were historically English. Further, this article will discuss the culture of Ireland so as to include Northern Ireland.

August 14, 1995, to discuss peace prospects,³ and this November President Bill Clinton became the first United States President since John Kennedy to visit Ireland.⁴ Many hope the Framework Document signals the beginning of a resolution of Ireland's historical conflict. Few, however, grasp the complex and seemingly irreconcilable tensions in Ireland—tensions rooted in fundamental religious, cultural and political differences, which have proved extremely difficult to resolve. These problems stem from the Anglo-Irish relationship, which stretches back to the Roman Empire. The Deputy Prime Minister of the Republic of Ireland recently admitted:

It would be facile and quite wrong to blame this problem on some character flaw in the people living in Northern Ireland. On the contrary, the attitudes of both communities are self-evidently rooted in the wider and turbulent history of Anglo-Irish relations.⁵

Thus, any lasting solution in Ireland must begin by overcoming the legacy of history.⁶ This will not be an easy task.

The purpose of this article is to provide an overview and analysis of the current situation in Ireland. Accordingly, Part I provides the historical framework necessary to understand the current situation in Ireland. Building on the historical foundation laid out in Part I, Part II analyzes recent political developments in Ireland: the 1993 Joint Downing Street Declaration, the September 1994 cease-fire declared by the Irish Republican Army and its unionist counterparts, and the February 1995 Framework Document. Finally, Part III offers a prognosis for the future of Anglo-Irish relations and for a peaceful, lasting solution to the conflict in Ireland.

I. THE PAST

In attempting to understand the problems in Northern Ireland today, one must look to the depth of the differences that exist between

3. *Jimmy Carter Meets Ulster Loyalists Leaders*, AGENCE FRANCE PRESSE, August 14, 1995, available in LEXIS, News Library, Curnws File.

4. Marianne Means, *Clinton Hopes Journey Will Bestow a Little Bit of Irish Luck*, VANCOUVER SUN, Aug. 17, 1995, at A19.

5. Dick Spring, *Gaining the Consent of the Governed: A Prerequisite to Peace in Northern Ireland*, 18 FORDHAM INT'L L.J. 6, 7-8 (1994). Dick Spring, Teachta Dala (Member of Parliament) and leader of the Irish Labor Party, is Tanaiste (Deputy Prime Minister) and Foreign Minister of the Republic of Ireland. *Id.* at 6.

6. "Famous battles from many generations ago are spoken of in the present tense, and cultural symbols still exert a powerful emotional pull on the hearts and minds [of those in Northern Ireland] The all too familiar sight of policemen in riot gear battling against crowds of stone-throwing youths and dodging petrol bombs on the hot city streets of Northern Ireland over the weekend was a telling reminder of just how helplessly the Province is trapped by its own history." *Northern Ireland Divided by History*, THE SCOTSMAN, August 14, 1995, at 2.

the English and Irish. In fact, the very foundations or beginnings of these two distinct peoples are very different.⁷ In order to understand the plight of the Irish, one must understand their beginnings, how they varied from those of the English, and the historical domination of the English over the Irish.

A. *The Beginning of the Anglo-Irish Conflict*

The Anglo-Norman conquest began England's political domination of Ireland. This conquest, which began in the twelfth and lasted until the eighteenth century, was subtle and complex. Anglo domination of the Irish began about 1156, when Pope Adrian IV (1100-59), the only English pope in history,⁸ gave Ireland to King Henry II (1133-89) of England in the papal bull entitled *Laudabiliter*.⁹

7. To be sure, fundamental Anglo-Irish differences can be traced to Roman times. The Celts invaded Ireland during the middle of the first millennium B.C. See generally Donnchadh O'Corrain, *Prehistoric and Early Christian Ireland*, in *THE OXFORD ILLUSTRATED HISTORY OF IRELAND 1* (R.F. Foster ed., 1989) (noting that the Celts probably assimilated the Neolithic people that they encountered when they invaded Ireland). Because these Neolithic people had no system of writing, little contemporary record of the Celtic invasion exists. Most likely the process was slow and gradual, but any description of the Celticization of Ireland is speculative. See THOMAS E. HACHEY ET AL., *THE IRISH EXPERIENCE 3* (1989).

Although the Celts inhabited most of the island, they lacked central leadership. The geography of Ireland helps to explain the lack of political unity. See generally J.H. Andrews, *A Geographer's View of Irish History*, in *THE COURSE OF IRISH HISTORY 17, 17-29* (T.W. Moody & F.X. Martin eds., 1995); Desmond Gillmor ed., *THE IRISH COUNTRYSIDE* (1989). Four main regions comprise Ireland: Ulster, Connaught, Leinster, and Munster. The geography of Ireland arguably affected its political development:

Ireland's geography helps to explain why it has never been completely conquered and why "divide and rule" has often been the only way to govern the island. Though generally saucer-shaped with mountainous uplands around the rim, this ring of uplands is broken in many places, often ending in spectacular sea-cliffs. Though it has a large, flat heartland, the multiplicity of lakes and bogs has hindered movement there and prevented central Ireland from becoming a center of political power.

HACHEY, *supra*, at 1.

Another factor contributing to political disunity was the Celtic concept of tribe, which was defined by a group of people, not an area of land. See generally GERHARD HERM, *THE CELTS: THE PEOPLE WHO CAME OUT OF THE DARKNESS 252-53* (1976). Each tribe had a king; there was no orderly system of accession to the crown; and no king ever came close to uniting the island. At a time when the Romans were at the height of centralized authority, ruling much of Europe, the Celts had as many as 150 kings in Ireland. HACHEY, *supra*, at 3.

8. F.X. Martin, *The Normans: Arrival and Settlement*, in *THE COURSE OF IRISH HISTORY, 123, 125-26* (T.W. Moody & F.X. Martin eds., 1995).

9. HACHEY, *supra* note 7, at 9. Despite later claims that *Laudabiliter* was never officially decreed, evidence indicates that *Laudabiliter* was an official bull, although no copy exists in the Vatican archives. *Id.*

In 1166, one hundred years after the Norman conquest of Britain¹⁰, the Irish actually invited the Anglo-Normans to Ireland. A dispute arose between two Irish kings. As a result, King Dermot MacMurrough (Diarmait Mac Murchada) of Leinster fled Ireland after his defeat and asked for the assistance of Richard de Clare, an Anglo-Norman.¹¹ "The invitation inevitably became an invasion. Like most great changes in history, it was an accident, unforeseen and unplanned, which opened up Ireland politically to expansive Anglo-French feudalism . . ."¹² Richard landed in Ireland in 1170 and recaptured the lands of MacMurrough.¹³ As payment for his help, Richard demanded marriage to the King's oldest daughter and the right of succession to the Kingdom of Leinster after the King died.¹⁴ Shortly after, when MacMurrough died on May 1, 1171, Richard took over and, through treaties and wars, rapidly increased his power in Ireland.¹⁵ By 1300 the Normans governed most of Ireland,¹⁶ yet "the Normans never came in sufficient numbers to complete the conquest."¹⁷

B. Two Religions

The greatest obstacle to peace in Ireland is the intolerance that Catholics and Protestants¹⁸ have for one another. Although these

10. C. WARREN HOLLISTER, *THE MAKING OF ENGLAND: 55 B.C. to 1399, 189-90* (3d. ed., 1976). The conquest of Ireland differed from that of the British Isles in that in Ireland there was no structure for the Normans to take over as there had been in England. *Id.*

11. O'Corrain, *supra* note 7, at 52. Richard de Clare, the Earl of Strigoil, was known as "Strongbow." *Id.*

12. *Id.*

13. HACHEY, *supra* note 7, at 10.

14. Martin, *supra* note 8, at 127.

15. *See id.* at 132-35. Henry II, ruler of northern France and England landed in Ireland in 1171 to check the increasing power of Strongbow. "As a general rule the Normans contented themselves with the plains, the coasts, and the riverways; they left the hill-country, the woods, and the boglands to the native Irish." *Id.* at 134-35.

16. *Id.* at 143.

17. *Id.* at 127. "The Irish question had become part of the heritage of Ireland and England." *Id.*

18. Anglo-Irish religious differences can be traced to Roman times. The Celts had a different religion than the Romans, who had extended their authority over all of England, Wales and Scotland by 84 A.D. Significantly, Britain was part of the Roman Empire, but Ireland never was. *See generally* HOLLISTER, *supra* note 7, at 4-7. The Romans did not tolerate Celtic religion. Celtic "priests" ("druids" to a Celt) were seen as resistant to the Romans and were not tolerated. The Celtic religion included human sacrifice, which the Romans considered barbaric. HACHEY, *supra* note 7, at 3.

By the third century A.D. the Roman Empire was weakening, and the threat of Germanic invasion in Britain and Ireland was growing. In 410 the Romans pulled out of Britain. HOLLISTER, *supra* note 10, at 16. During this period there was a small Celtic revival, but the Germanic invasions left a strong mark on Britain. Celtic culture was gone forever in Britain.

two denominations of Christianity have theological and ideological differences, Anglo-Irish conflict has been primarily political.

Religious dissension between Catholics and Protestants in Ireland began two years after the Hundred Years War ended.¹⁹ The War of the Roses, in which competing houses vied for the throne of England, began in 1455.²⁰ The prior two centuries had been marked by the general indifference of English rulers toward Ireland.

Shortly after the House of York emerged victorious in the War of the Roses, it was supplanted by the Tudors. In 1485 Henry Tudor was proclaimed King Henry VII (1457-1509) of England. Confronted with a chaotic political situation in Ireland, he convened a packed English Parliament which passed the infamous Poyning's Law.²¹ This legislative enactment, until its repeal in 1782,²² effectively precluded the Irish from self-rule by providing that no Parliament could be convened without the consent of the King.²³

Henry VIII (1491-1547) became king in 1509.²⁴ Henry VIII's divorce from his first of eight wives, Catherine of Aragon, had profound effects on Ireland. Divorce is prohibited by the Catholic Church and the Pope refused to grant an annulment. Henry insisted on the divorce. Because of this divorce, Henry VIII broke away from the Roman Catholic Church and formed the Church of England in 1527.²⁵ Initially, the Church of England was Catholic in doctrine, but

See Thomas Cardinal O'Fiaich, *The Beginnings of Christianity*, in *THE COURSE OF IRISH HISTORY* 61 (T.W. Moody & F.X. Martin eds., 1995).

The conversion of the Irish to Christianity in the 5th century is usually accredited to St. Patrick. See generally R.P.C. HANSON, *SAINT PATRICK, HIS ORIGINS AND CAREER* (1968). Normally missionaries were sent to convert the king (and hence the entire nation); however, in Ireland a preaching and conversion method was developed. Monastic life became extremely important. See O'Corrain, *supra* note 7, at 10-13. This independent monastic-based religion varied significantly from the papal-centered tradition that was developing in England and continental Europe. As England was confronted with two religious influences, one the decentralized monastic tradition of the Irish and the other the highly centralized papal tradition, tensions mounted. In 663 the Synod of Whitby was called and the English king, Oswy, preferred the Roman version. HOLLISTER, *supra* note 10, at 35-36. Roman Christianity was chosen for the British mainland, while the Irish tradition was rejected.

19. The Hundred Years War lasted for 115 years, from 1338 to 1453. HOLLISTER, *supra* note 10, at 229.

20. HACHEY, *supra* note 7, at 12-14.

21. Art Cosgrove, *The Gaelic Resurgence and the Geraldine Supremacy*, in *THE COURSE OF IRISH HISTORY* 168-70 (T.W. Moody & F.X. Martin eds., 1995). Poyning's Law was enacted in 1494. *Id.* at 170.

22. *Id.*

23. *Id.* "Under [Poyning's Law's] terms parliament was to meet in Ireland only after royal permission had been granted and after the king and council in England had been informed of and had approved the measures which it was proposed to enact." *Id.* at 170.

24. HACHEY, *supra* note 7, at 15.

25. Henry VIII's break from the Roman Catholic Church was anything but religious. In fact, England had been one of the most staunch defenders of the papacy before this rift. Henry

did not recognize the Pope's religious authority.²⁶ By the end of the sixteenth century Calvinist influence was strong in the Church of England and the Church became primarily Protestant. In Ireland, the primarily Anglo ruling class was loyal to the Church of England, yet most other Irish remained Catholic and loyal to the pope. An intense religious dichotomy emerged between the native Catholic Irish and the Protestant English. Although the Church of Ireland (modeled after the Church of England) was established as the official and sole church in Ireland and the Irish were taxed to support it, the vast majority of the Irish remained Catholic. The Protestant Reformation had flourished on the European continent and among England's merchant class. However, no such class existed in Ireland, and the Reformation never took root.²⁷ Protestantism in Ireland has therefore always been viewed as an English import.²⁸

Henry VIII also had a significant political impact on the Irish:

His reign saw a new departure. Before it . . . the English crown was powerless in most parts of Ireland; but Henry and his successors pushed their affairs so well that Henry's daughter Elizabeth was in due course able to pass on to her successor . . . something unique: the undisputed rule of the entire island. Between them, four sovereigns of the house of Tudor . . . completed the conquest of Ireland. Not only did they bring the whole country for the first time under the control of a central government, but they insured that that government would be an English one.²⁹

The religious differences that plague current relations in Ireland were in place by the time Elizabeth I (1533-1603) began her rule in 1557:

VIII believed that he was a ruler chosen by God. He also believed that it was necessary to have a male child to pass the throne. Because Catherine was unable to bear him a male child (she had several females and several abortive pregnancies) he sought a divorce and a new wife. Modern science has shown that the male chromosome determines a child's sex, so Henry VIII's genes failed to produce a male child with Catherine.

Normally, an annulment would have been granted, but circumstances prohibited such an annulment. The Hapsburg Emperor, Charles V, then ruler of Spain had invaded the Italian peninsula and had the Pope, Clement VII, as a pseudo-hostage. The Pope was technically free, but was surrounded by Charles' troops. Charles was the nephew of Catherine of Aragon, saw it as a disgrace to his family to permit the annulment, and therefore pressured the Pope into refusing. Accordingly, Henry VIII declared himself ultimate head both politically and religiously in England and founded the Anglican Church (Church of England). For a discussion of these events see generally J.J. SCARISBRICK, *HENRY VIII* (1968). See also JAMES A. WILLIAMSON, *THE TUDOR AGE* (1979).

26. For a discussion of this religious split see generally G.R. ELTON, *REFORM AND REFORMATION: ENGLAND 1509-1558* (1977).

27. HACHEY, *supra* note 7, at 22.

28. *Id.*

29. G.A. Hayes-McCoy, *The Tudor Conquest, in THE COURSE OF IRISH HISTORY 174* (T.W. Moody & F.X. Martin eds., 1995).

The Tudor effort to Anglicize Ireland was intensified during the long reign of Elizabeth I ([ruled] 1558-1603). New efforts were made to transform Ireland in religion, culture, and politics. The Reformation widened the gulf between the two islands as politics and religious ideology became inseparable.³⁰

Elizabeth, in an attempt to force the Irish to convert, instituted recusant fees,³¹ which were fines, for those not attending Sunday services at the Church of Ireland.³² The fees were not well received by Irish Catholics. Tensions mounted between the official Protestant Church of Ireland, and the Irish Catholic Church, which, though illegal, was the church of the majority of Irish people. Hence, the Irish were forced to subsidize a church they repudiated and to practice their religion underground.

During this time, all of Europe was divided between Catholicism and Protestantism.³³ England was a major Protestant power and had as its greatest enemies the Catholic powers of Spain and France.³⁴ The Pope was also seen as a rival leader. Catholics had to give their allegiance to the Pope, and the Pope was the King's political and religious enemy. Thus to English Protestants loyalty to Catholicism was loyalty to a foreign ruler. Distrust and hatred between the English and Irish grew. The English were viewed as invading foreigners, and the Irish were ungrateful rebels to the crown. Because of Ireland's close proximity to England, the Crown constantly feared that Catholic powers would encourage and subsidize revolt in Ireland.³⁵

C. *The Plantations and Elizabethan Ireland*

Mary Tudor (1516-1558), the daughter of Henry VIII and his first wife Catherine of Aragon,³⁶ introduced the idea of "plantation" in Ireland.³⁷ "The project involved driving out the native Celtic

30. HACHEY, *supra* note 7, at 16.

31. *Id.*

32. *Id.*

33. Hayes-McCoy, *supra*, note 29, at 183.

34. See generally ARTHUR D. INNES, ENGLAND UNDER THE TUDORS 1-8 (4th ed. 1913).

35. *Id.*

36. HACHEY, *supra* note 7, at 16. Although Mary was the daughter of Henry VIII, she was not his immediate successor to the throne. Henry VIII (reigned 1509-47) was followed by his only son Edward VI (reigned 1547-52), who was then followed by his half-sister Mary (reigned 1552-57). *Id.*

37. *Id.* "The idea of plantation was straightforward. Land was the source of wealth and the basis of power. To take it from the [C]atholic Irish and give it to [P]rotestant immigrants would at once weaken resistance to English rule and bring into being a [P]rotestant community sufficiently numerous, and sufficiently powerful to keep the peace in Ireland." Aidan Clarke,

population from a particular area and replacing it with loyal 'English' settlers."³⁸ This effort to Anglicize Ireland was intensified under Mary's successor Elizabeth I.³⁹ For example, the plantation of Munster was initiated in 1584, when 500,000 acres were confiscated from the native population and redistributed to English settlers.⁴⁰ Generally, this plantation policy was a success in Munster.

The Londonderry plantation in Ulster presents a particularly striking example of English exploitation of the Irish. James (Stuart) of Scotland, who became James I of England (ruled 1603-1625) upon the Death of Elizabeth I in 1603, undertook this endeavor.⁴¹ Under James I, the English were to settle 2 million Irish acres.⁴² The entire county of Derry was given to the English, and its name subsequently changed to Londonderry.⁴³

The famed Flight of the Earls in 1607 robbed Ulster of its natural aristocracy when Hugh O'Neill, Earl of Tyrone, and Rory O'Donnell, Earl of Tyrconnell, fled to the continent to avoid arrest, cherishing, perhaps, the hope of returning to Ireland with a Spanish army. They both died in exile in Rome, and buried with them in the Holy City were the last hopes of an independent Gaelic Ireland.⁴⁴

During this settlement most of the good land in Ulster was also taken from the Irish middle class.⁴⁵ Because the Irish peasants had nowhere to go, they became tenant farmers for the new settlers,⁴⁶ which meant that they worked the land in return for a place to stay and a portion of the crop. In essence, "[a] whole new society was created . . ."⁴⁷

The Colonisation of Ulster and the Rebellion of 1641, in THE COURSE OF IRISH HISTORY 189, 190 (T.W. Moody & F.X. Martin eds., 1995).

38. HACHEY, *supra* note 7, at 16.

39. *Id.*

40. *Id.* at 18.

41. *Id.* at 19. The crowning of James as King of England united the crowns of England and Scotland. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* The Flight of the Earls in 1607, in which more than ninety of the leading men in Ulster went into voluntary exile, robbed Ulster if its natural aristocracy and allowed the Anglicans to subdue the land and people rather easily. Clarke, *supra* note 37, at 190.

45. *Id.* "The new Scottish settlers would play an important role in history. As Ulster Scots, they helped shape a distinctive Ulster regionalism different from the rest of Ireland." *Id.*

46. Clarke, *supra* note 37, at 192. "[W]hat happened at that time [the first half of the seventeenth century] can be summarised in a single brief sentence. The land of Ireland changed hands." *Id.* at 189.

47. *Id.* at 192. The settlers brought with them their own traditions, their own institutions, and their own familiar way of life. They levelled [sic] the forests and devoted themselves to arable farming, rejecting the pastoral ways of the Irish. They built towns and villages of neat timber-framed

Protestant English political dominance and subrogation in Ireland continued until the Catholic Rebellion in 1641. Charles I (1600-49) was involved in a bitter struggle with Parliament. Because Charles I was sympathetic to the Catholic cause and the Parliament was homogeneously Protestant, the outcome of this struggle was particularly significant to the Irish. Charles I was perceived to be succumbing to Parliament, therefore the Catholics in Ireland began to fear reaction from the Protestant Parliament if it were to seize absolute control:

The fear that this would sooner or later happen, was one of the motives which prompted some of the Irish, particularly in Ulster, to begin to think in terms of an armed rising. It was not the only reason. The Irish in Ulster had never reconciled themselves to English rule nor to the plantation: they had always hoped to recover the property and the social position which had been taken from them. In 1641, they saw their chance to profit from English divisions.⁴⁸

The rebellion of 1641 was marked by atrocities, fueling hatred between Protestants and Catholics.

D. The Cromwellian Era

In 1642 Charles I attempted to arrest some members of Parliament, and Parliament attempted to depose the King. Charles I had dismissed Parliament and ruled on his own from 1629 to 1640. However, in 1641 Charles I needed the financial assistance of Parliament, called it back into session, quibbled with it and dismissed it once again. Parliament refused to leave and tensions rose. Parliament raised an army headed by Oliver Cromwell (1599-1658) to resist the king. Soon England was embroiled in civil war. During the next several years, both Charles I and Parliament were too entangled in war to consider Ireland. However, in 1649, after Parliament arrested, tried and executed Charles I, it turned its attention to the turbulent situation in Ireland.⁴⁹

Few events have shaped Anglo-Irish relations as much as Cromwell's notorious siege of Drogheda in 1649. This event continues to

houses and thatched or slated stone cottages, carefully sited and laid out as fortified frontier posts. They established markets and local industries, built churches and schools, and introduced the ordinary amenities of life to which they had been accustomed at home The changes which these numerous and socially diversified [P]rotestant newcomers wrought in Ulster were dramatic and far-reaching.

Id. at 191-92.

48. *Id.* at 198.

49. *Id.* at 202.

be the subject of serious debate. Sympathizers and Irish national historians tend to emphasize the horror and brutality of Drogheda.⁵⁰ These commentators generally portray Cromwell as a ruthless killer⁵¹ allowing this event to continue to fuel the fire for the current conflict. British historians, apologists, and those less sympathetic to the Irish, argue that Cromwell's warning to Drogheda's governor and the necessity of the siege mitigate the harshness of the nationalist historians' account.⁵²

In 1649 Cromwell landed in Ireland with 20,000 men and three aims: restore English supremacy in Ireland, eliminate the remaining Catholic land-owning class, and convert Irish Catholics to Anglicanism.⁵³ On September 10, 1649, Cromwell issued an official, but unheeded, warning to surrender Drogheda.⁵⁴ When the siege was over, 1500 to 2000 persons were dead.⁵⁵

Those sympathetic to Irish Catholics have generally emphasized the siege's excessive brutality toward not only opposing soldiers, but also priests, women and children.⁵⁶ English sympathizers have de-emphasized the killings and portrayed Cromwell's actions as politically necessary.⁵⁷ Other historians blame Drogheda's governor for the carnage.⁵⁸

50. See e.g. CHRISTOPHER HILL, *GOD'S ENGLISHMEN* 116-17 (1973).

51. *Id.*

52. See, e.g., MAURICE ASHLEY, *THE GREATNESS OF OLIVER CROMWELL* 232-34 (1966).

53. Nicholas Canny, *Early Modern Ireland*, in *THE OXFORD ILLUSTRATED HISTORY OF IRELAND* 104, 145-46 (R.F. Foster ed., 1989).

54. ANTONIA FRASER, *CROMWELL, THE LORD PROTECTOR* 334 (1973).

55. HILL, *supra* note 50, at 117.

56. See, e.g., *id.* at 116-17.

57. ASHLEY, *supra* note 52, at 232-34. In fact, Ashley implies that the harsh tactics Cromwell applied may have *saved* lives in the long run. *Id.* He argues this in the same way that some would argue that the explosion of the atomic bombs in Hiroshima and Nagasaki during World War II brought that war to an end, arguably saving lives. *Id.* This analogy is strained at best. Assuming that the explosion of the atom bomb did "save lives," the fact that the British-Irish struggle still exists today is solid evidence that Cromwell's actions at the siege of Drogheda did little to prevent future turmoil. In fact, these very actions have had the opposite effect, in that they stand as age-old reasons why the Catholic-Irish have a continuing distaste for Protestants. Some commentators have described such explanations as Ashley's as nothing but *ex post facto* rationalizations, indicating that such reasons were never motivations of the actual participants. R.F. FOSTER, *MODERN IRELAND* 102 (1988) ("As with later wartime outrages, the argument was proffered [by the English] that such tactics saved lives in the long run by acting as a scare tactic; but this . . . has the tone of an *ex post facto* rationalization.").

58. FRASER, *supra* note 54, at 334-36. Claiming that Cromwell followed the established rules of war, these historians hold that Cromwell gave proper notice of the consequences and therefore any remaining fault lies with the governor. *Id.* This logic is also strained. Can the French be blamed for resisting the aggression of Hitler? Furthermore, even if barbarism was the order of the day, the actions are still barbaric. As one historian points out, "the savagery of the massacre was different from anything that had happened in the English civil wars . . ." HILL, *supra* note 50, at 116-17. This implies that Cromwell would not have acted in the same

Some claim that Cromwell's motive was religious zeal,⁵⁹ while others claim that Cromwell's motive was political power.⁶⁰ Most likely, Cromwell acted because of both reasons.⁶¹ Because Cromwell has been recognized as relatively tolerant of other religions on the British mainland, the Irish Catholics were probably viewed unfavorably because of "the political associations of Irish Catholicism."⁶²

The result of Cromwell's barbaric Irish campaign was a shift in ownership of the land. Where the plantations had sought to replace Irish Catholics with Anglo Protestants, land confiscations under Cromwell were not so ambitious. Instead, the titles of properties were simply shifted:

The Cromwellian settlement was not so much a plantation, as a transference of the sources of wealth and power from [C]atholics to [P]rotestants. What it created was not a [P]rotestant community, but a [P]rotestant upper class.⁶³

Shortly after Cromwell's death in 1658, the English monarchy was restored.⁶⁴ Charles II (1630-1685) was pro-Catholic, but those who restored him were not.⁶⁵ Charles II derived his authority from the Protestant Parliament, and submitted to its animosity toward Catholics.⁶⁶ Charles II did restore the lands of some exiled Catholic peers (great nobles) in Ireland, but the Cromwellian land confiscation basically went untouched.⁶⁷ Earlier policies of official discrimination in Ireland were revived: no Catholics could hold office or serve in Parliament because they had to pledge allegiance to the Protestant Church of Ireland.⁶⁸ Ironically, the official state church, the Church of Ireland, was a minority. Further, Irish universities were only open to members of the Church of Ireland, effectively precluding native Catholics from attaining a higher education.

manner against other Englishmen. Under this assumption, the disregard for life at Drogheda can be seen as a manifestation of Cromwell's view of Irish-Catholics as substandard.

59. GIOVANNI CASTIGAN, *A HISTORY OF MODERN IRELAND* 78-79 (1969). Castigan cites both Cromwell's Protestant upbringing and the Catholic rebellion of 1641 as reasons for both Cromwell's distaste of Catholics and the apparent brutality of the siege at Drogheda. *Id.* at 79.

60. See Christopher Hill, *Political Animal*, *NEW YORK REVIEW OF BOOKS*, June 9, 1977, at 40. In these accounts, it is claimed that the English saw suppression of the Catholic-Irish as a necessary move to maintain English security. *See id.*

61. HILL, *supra* note 50, at 116-17.

62. *Id.* at 121.

63. Clarke, *supra* note 37, at 203.

64. Nicholas Canny, *Early Modern England*, in *THE OXFORD ILLUSTRATED HISTORY OF IRELAND* 104, 148 (R.F. Foster ed., 1989). The era is known as the Stuart Restoration.

65. See HACHEY, *supra* note 7, at 24-25.

66. *Id.*

67. See Clarke, *supra* note 37, at 205; HACHEY, *supra* note 7, at 25.

68. The Church of Ireland was restored in 1661.

E. James II and the Glorious Revolution

The fortune of Irish Catholics changed after the death of Charles II in 1685, with the accession of his openly Catholic brother James II (1633-1701). James II appointed Catholics to both political office⁶⁹ and the judiciary.⁷⁰ Irish Protestants became alarmed at the prospect of Catholics entering the Irish Parliament, seizing control⁷¹ and restoring Irish land titles, especially those seized by Cromwell a few decades earlier. Consequently, some Protestants fled Ireland, and others armed themselves.⁷² A standing army of Catholics was raised in Ireland to keep peace. Finding James II intolerable, several English notables sent a delegation to Holland to ask William of Orange to take the throne.⁷³

When Parliament asked William to take the throne, James II went into exile in Ireland.⁷⁴ The English declared that James had abdicated the throne. Parliament then declared the crowns of England and Ireland inseparable, ensuring that James II had no claim to either throne. In Ireland, James II summoned a "patriot Parliament,"⁷⁵ but when Protestants took up arms in protest, his cause was doomed.⁷⁶ Initially, the Catholics won the initiative at Londonderry. The victorious siege of Protestant Londonderry by the Catholics in 1690 is an event that, perhaps more than any other, scarred the Protestants:

In fact, the siege mentality of Ulster Protestants today is often traced back to the events of 1690 in Londonderry. For 105 days, about 30,000 Protestants crowded into the walled city of Londonderry and withstood the siege of James II's forces until they were relieved by William's fleet on July 28 During the long siege, thousands within the walls died of starvation.⁷⁷

The legend of this siege includes accounts of the horrible deaths of innocent Protestants at the hands of ruthless Catholics. For Protestants, this siege was a wrong inflicted by the Catholics that was to be forever avenged. "August 12 is the traditional day for Protestant

69. HACHEY, *supra* note 7, at 26.

70. J.G. Simms, *The Restoration and the Jacobite War*, in *THE COURSE OF IRISH HISTORY* 204, 208 (T.W. Moody & F.X. Martin eds., 1995).

71. Canny, *supra* note 64, at 104; *see also* Simms, *supra* note 70, at 209.

72. "Protestants took flight; merchants called in their stocks and pessimists left for England." *Id.* at 208.

73. Simms, *supra* note 70, at 209-10. "In 1688 seven English notables invited William of Orange, husband of James' protestant daughter; to invade England and drive out his father-in-law." *Id.* at 209. This was known as the Glorious Revolution.

74. *Id.* at 209-10.

75. HACHEY, *supra* note 7, at 28.

76. *See* Simms, *supra* note 70, at 212-16.

77. HACHEY, *supra* note 7, at 28.

marches organised by the 'Apprentice Boys,' an organisation founded in 1714 to celebrate the 13 youths who closed the gates of Londonderry in the face of James II's besieging army in 1689.⁷⁸ The 1995 commemoration resulted in violence in Belfast and Londonderry injuring dozens of police and demonstrators.⁷⁹

James II was defeated by William at the Battle of the Boyne on July 1, 1691.⁸⁰ "In a military sense it was not a decisive victory; the Irish losses were small and their army lived to fight another day. But it was reported all over Europe, and it had a great psychological effect."⁸¹ The battle was ended by the Treaty of Limerick, which allowed the French and enemy Irish to withdraw to continental Europe.⁸² As many as 11,000 Irish Catholics fled their homeland. The wrongs committed by both sides would fuel hatred that still remains. "The words 'Remember the Boyne' are still periodically chalked up on the walls of Belfast today, and 12 July, the anniversary of this victory which took place over 280 years ago, is still celebrated in Northern Ireland as if it had some real significance for the present."⁸³

The subsequent Irish Parliament was Protestant and thus vindictive against the rebel Catholics. A penal code was passed by the Protestant Irish Parliament,⁸⁴ which prevented Catholics from owning large tracts of land.⁸⁵ Because an oath to the king and the Protestant Church of Ireland was required to join the military, Catholics were effectively barred from military service.⁸⁶ Early in the

78. *Overnight Clashes Between Nationalists and Police*, AGENCE FRANCE PRESSE, August 13, 1995, available in LEXIS, News Library, Curnws File. [hereinafter *Overnight Clashes*].

79. *Id.*

80. Simms, *supra* note 70, at 212. James II also received a small amount of assistance from Louis XIV of France. *Id.* at 211-14. The actual date of this battle was July 1, 1691, but due to the introduction of the new style calendar in 1752, this battle is now commemorated on July 12. ROBERT KEE, *THE MOST DISTRESSFUL COUNTRY* 18 n.* (1972) [hereinafter KEE, *DISTRESSFUL COUNTRY*].

81. Simms, *supra* note 70, at 212.

82. KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 18.

83. *Id.* at 17-18. On July 12, 1995, this annual celebration was held. The following account was reported the next day:

Police armored cars barricaded Roman Catholics within their neighborhood Wednesday as the Protestant marchers commemorated their side's traditional supremacy in Northern Ireland.

Sporadic violence marred the province's biggest and most divisive holiday, the Twelfth of July, when more than 80,000 Orange Order members and "kick the pope" bands celebrate Protestantism and the British crown.

Protestants Celebrate in Belfast, TAMPA TRIBUNE, July 13, 1995, at 6.

84. HACHEY, *supra* note 7, at 33. "Ostensibly the aim of the anti-Catholic laws was to eradicate the Catholic religion in Ireland . . ." Maureen Wall, *The Age of the Penal Laws*, in *THE COURSE OF IRISH HISTORY* 217, 218 (T.W. Moody & F.X. Martin eds., 1995).

85. See KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 19.

86. *Id.*

eighteenth century, Catholic suffrage was eliminated⁸⁷ and an act was passed sending all clergy into exile.

By dealing these and other social and economic blows at the old Catholic landed class and their tenants, the penal laws isolated the vast majority of the people of Ireland in an inferior identity. They became segregated from the rest of society and the normal processes of law.⁸⁸

A law passed by the Irish Parliament had to be sent to the English Parliament Privy Council for passage.⁸⁹ If the bill was amended in England before it was passed, then the amended version became law regardless of the difference from the original bill and regardless of the intent or input of the Irish Parliament.⁹⁰

F. *The Act of Union*

Revolutions in France and America inspired the Irish to aspire to independence from England.⁹¹ The Parliament in Ireland between 1782-1800 was known as Grattan's Parliament after Henry Grattan (1746-1820).⁹² The Parliament generally wanted home rule and desired to make Ireland the sister kingdom of England. Ironically, the Parliament required the might of England to repress the Catholic Irish majority. The Parliament feared that the moment home rule was granted, the Catholic Irish majority would seize power.

The Grattan Parliament gained some major concessions from England. In 1778 the Navigation Act was repealed.⁹³ This act had stifled Irish commerce by banning Irish exports to the American Colonies and establishing prohibitive tariffs on the importation of Irish cattle to England.⁹⁴ However, by the turn of the century, virtual free trade was established between England and Ireland.

87. R.F. Foster, *Ascendancy and Union*, in THE OXFORD ILLUSTRATED HISTORY OF IRELAND 161, 164 (R.F. Foster ed., 1989).

88. KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 19.

89. HACHEY, *supra* note 7, at 33.

90. *Id.* "[T]he Declaratory Act of 1720, passed by the British Parliament, went beyond Poyning's Law in formally asserting the right to legislate directly for Ireland without the approval of the Irish Lords or Commons—which it had already been doing for some time." *Id.* It must be noted that the Irish Parliament at this time was still composed exclusively of Protestants and therefore the Catholic majority was doubly removed from the legislative process. Wall, *supra* note 84, at 217.

91. See HACHEY, *supra* note 7, at 43-47.

92. Foster, *supra* note 87, at 178-79.

93. KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 27.

94. HACHEY, *supra* note 7, at 25.

In 1783 Poyning's Law was effectively repealed, and the Irish were constructively given home rule.⁹⁵ Nevertheless, the English still controlled the army and foreign affairs. By 1793 most of the penal code had been abolished. However, Irish Catholics were still disenfranchised because, although the Irish Parliament was semi-independent, Catholics could not vote or hold office.⁹⁶ Irish Protestants gained important concessions, but Irish Catholics did not.

The Irish Parliament's independence ended in 1800 when the English Parliament passed the Union Act.⁹⁷ This act integrated the Irish Parliament into the English Parliament;⁹⁸ however, the Irish were not given the equal status with the English that the Scots and Welsh had been given.⁹⁹

In 1829 the Roman Catholic Relief Act was passed in the English Parliament.¹⁰⁰ This act emancipated both English and Irish Catholics. Irish Catholics could once again run for office:¹⁰¹ "But political equality had been delayed too long, granted under pressure and not as an act of justice, and enacted with humiliating strings attached. It therefore failed to merit the gratitude of Irish Catholics or divert them from nationalism."¹⁰²

Daniel O'Connell (1775-1847) formed the Catholic Association in 1823, which campaigned for the repeal of the Act of Union.¹⁰³ He advocated a federal form of government, giving Ireland power over local issues but submitting to a federal government for common issues.¹⁰⁴ O'Connell "rejected physical force as the route to Irish freedom."¹⁰⁵ In this way he forced the British Parliament to choose

95. R.B. McDowell, *The Protestant Nation*, in *THE COURSE OF IRISH HISTORY* 232, 234 (T.W. Moody & F.X. Martin eds., 1995). "The declaratory act was repealed and . . . the British parliament specifically renounced its claim to legislate for Ireland. And Poyning's act was so drastically modified that the only control over Irish legislation retained by the crown was the right to veto bills Ireland was now in form an independent kingdom sharing a monarch with the neighbouring island." *Id.*

96. *Id.* at 234-38; see also, DAVID THOMSON, *ENGLAND IN THE NINETEENTH CENTURY* 61 (1987) [hereinafter THOMSON, *NINETEENTH CENTURY*].

97. The Acts of Union of 1800 included the Union with Ireland Act 1800, 39 & 40 Geo. 3, ch. 67 (1800), reprinted in 31 Halsbury's Statutes of England 290 (Andrew Davies ed., 4th ed., 1994) and Act of Union (Ireland) 1800, reprinted in N. IR. REV. STAT. 137-43 (2d ed., 1982).

98. Foster, *supra* note 87, at 183.

99. HACHEY, *supra* note 7, at 53.

100. THOMSON, *supra* note 96, at 61.

101. HACHEY, *supra* note 7, at 64.

102. *Id.* at 65. Generally, the emancipation had little effect on the day-to-day lives of ordinary Catholics in Ireland. *Id.* The secret societies of this period were the first to consider violence as an appropriate diplomatic tool. For an excellent discussion of these secret societies, see KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 57-62.

103. See HACHEY, *supra* note 7, at 61-62.

104. See KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 179-81.

105. HACHEY, *supra* note 7, at 59.

between his passive movement and the potentially violent movements of the secret societies. His famous open-air mass meetings, some of which were attended by as many as a half a million followers,¹⁰⁶ certainly caught the attention of the British Parliament.¹⁰⁷

In 1835 a compromise between the Whigs in the British Parliament and O'Connell was concluded.¹⁰⁸ The Whigs promised reform in Ireland in return for O'Connell's efforts to keep them in office.¹⁰⁹ With this express compromise, the Irish perceived O'Connell as abandoning repeal for the more attainable notion of reform.¹¹⁰ In 1843 O'Connell planned the biggest mass meeting scheduled to that point.¹¹¹ His previous meeting had been quite successful and were a great cause of concern for the English. The British prohibited the meeting and sent troops to prevent the assembly.¹¹² Concerned with the treat of violence, O'Connell canceled the meeting. He was subsequently arrested and imprisoned for several months. His will and spirit broken, O'Connell was never the same force again.¹¹³

The achievements of O'Connell are notable. He created an Irish national opinion that forced British politicians to choose between reform or revolution. Hence, he created modern Irish nationalism.¹¹⁴ He successfully broadened the base of the Catholic movement. Most of all, he pursued his goals in peace and through the Parliamentary system.¹¹⁵

G. *The Great Famine*

Exclusive dependence on the potato shaped the Irish peasants' way of life as well as its meals.¹¹⁶ The introduction of the potato as a cheap and abundant source of food caused the population to grow and the land to be divided into smaller tracts.¹¹⁷ Thus, a large number of people would depend on a small tract of land for their

106. KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 204.

107. *See id.* at 202-12.

108. HACHEY, *supra* note 7, at 70.

109. *Id.*

110. *Id.*

111. J.H. Whyte, *The Age of Daniel O'Connell*, in *THE COURSE OF IRISH HISTORY* 248, 260-61 (T.W. Moody & F.X. Martin eds., 1995).

112. KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 210-11.

113. Whyte, *supra* note 111, at 260-61. The cancellation of this meeting had a drastic effect on O'Connell's movement. "Slowly the movement lost impetus . . . and long before O'Connell's death in 1847 it was clear that he had failed." *Id.* at 261.

114. HACHEY, *supra* note 7, at 62.

115. The Young Ireland organization succeeded O'Connell as the embodiment of Irish nationalism. KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 243-59.

116. For an excellent discussion of Irish reliance on the potato, *see generally*, CECIL WOODHAM-SMITH, *THE GREAT HUNGER*, 30, 35-36 (1962).

117. *Id.* at 35.

sustenance. The dependence on the potato primed the Irish for disaster¹¹⁸ when the crops literally rotted away in 1845:

It is now known that blight [the cause of the famine] is caused by a fungus named *Phytophthora infestans*. It was not a sickness of the plants themselves which turned the potato fields of Ireland black almost overnight. Invasion by a microscopic living organism took place, an organism able to reproduce itself with lightning speed.¹¹⁹

During this period when the Irish were dying or fleeing their homeland, "Britain was the most prosperous country in the world."¹²⁰ Sir Robert Peel initiated relief efforts on behalf of the English.¹²¹ Peel sought to intensify local efforts for relief, to establish a board of works to distribute some wealth, to set up provisions for the inevitable coming of fever and to attempt to repeal the corn [wheat] laws.¹²² He purchased Indian corn (maize), mainly in an attempt to control the market price of food,¹²³ but some actually made its way to the peasants.¹²⁴ Unlike the policies of those who followed him, Peel's measures were "prompt, skillful, and on the whole successful."¹²⁵

However, the British government essentially prescribed inaction as a remedy to the famine because it believed in laissez faire economics.¹²⁶ The underlying concept is that market forces should be left to react to natural causes and should be free from government interference.¹²⁷ While this solution may have worked in England, it failed miserably in Ireland, decimating the Irish.

The second wave of potato disease was discovered in August 1846,¹²⁸ but the minor relief mechanisms used in the previous season by Peel were discontinued.¹²⁹ Next, "the fever," representing two distinct forms of dysentery, decimated an already beaten population.¹³⁰ An exodus occurred, whereby the haggard Irish fled to

118. NORMAN RICH, *THE AGE OF NATIONALISM AND REFORM 1850-1890*, at 2 (2d ed. 1977).

119. WOODHAM-SMITH, *supra* note 116, at 94.

120. HACHEY, *supra* note 7, at 93.

121. E.R.R. Green, *The Great Famine*, in *THE COURSE OF IRISH HISTORY* 263, 268 (T.W. Moody & F.X. Martin eds., 1995).

122. *Id.* at 268-69.

123. See WOODHAM-SMITH *supra* note 116, at 55.

124. See WOODHAM-SMITH, *supra* note 116, at 54-55.

125. Green, *supra* note 121, at 268.

126. WOODHAM-SMITH, *supra* note 116, at 54.

127. The laissez-faire theory of economics is generally attributed to Adam Smith (1723-90). For the foundations of this theory see ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* (Chicago, William Benton 1952) (1776).

128. WOODHAM-SMITH, *supra* note 116, at 118.

129. HACHEY, *supra* note 7 at 93; Green, *supra* note 121, at 268-69.

130. WOODHAM-SMITH, *supra* note 116, at 188-205; Green, *supra* note 121, at 270-71.

Canada, the United States, Scotland and southern Wales.¹³¹ Conditions in these foreign lands were often deplorable yet not bad enough to make the Irish remain at home. In short, the situation in Ireland had become literally unbearable.¹³²

Generally, the British failed to provide adequate relief for the Irish.¹³³

In the long and troubled history of England and Ireland no issue has provoked so much anger or so embittered relations between the two countries as the indisputable fact that huge quantities of food were exported from Ireland to England throughout the period when the people of Ireland were dying of starvation.¹³⁴

Given the Irish embitterment over their treatment by the British, "[t]he famine was never 'over,' in the sense that an epidemic occurs and is over."¹³⁵ Although *laissez faire* was widely followed during this period, the British could have done more to alleviate Irish suffering, including providing available, inexpensive Indian corn.¹³⁶ Understandably, the famine "focused and intensified [Irish] hatred of British rule as the source of their miseries."¹³⁷

H. Home Rule

The desire for home rule existed in Ireland for many centuries. However, the modern Irish home rule movement is attributable to Isaac Butt, who formed the Home Government Association in

131. WOODHAM-SMITH, *supra* note 116, at 206-36; E.R.R. Green *supra* note 7 at 271-73.

132. "[A]s a direct result of the famine the population of Ireland was almost halved in twenty years." KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 258.

133. "The British Government's mind was made up. The property of Ireland must support the poverty of Ireland . . ." WOODHAM-SMITH, *supra* note 116, at 37.

134. *Id.* at 75.

135. *Id.* at 406.

136. *Id.* at 55.

There are similarities between the famine of the 1840s and the Holocaust of the 1930s and 1940s. The Jews and the Irish were both victims of what Albert Camus in *The Plague* described as ideological murder. Certainly the Nazis were more ruthless, heartless, and consistent in the application of racist principles than Trevelyan and his colleagues were in their anti-Irish Catholicism or in their enforcement of the dogmas of political economy. But Irish people dying of hunger or fever or crowded into the bowels of an emigrant ship, abused by heartless captains and crews, exploited by runners and hostel keepers in Liverpool, New York, Boston, and New Orleans, would have had scant consolation in knowing that their predicament was not the result of racism but a price they must pay to retain a free enterprise economy and to restore a "proper" population balance.

HACHEY, *supra* note 7, at 93.

137. HACHEY, *supra* note 7, at 93. "For the famine and its after-effects played a role in Irish history long after the grass had grown over the mass graves and the unwanted roads and pointless earthworks which the starving had had to construct in return for the first attempts at relief." KEE, *DISTRESSFUL COUNTRY*, *supra* note 80, at 176.

1870.¹³⁸ This was a private organization dedicated to uniting Irish Catholics and Protestants behind home rule. Butt, feeling that British industrial concerns could not be reconciled with Irish agrarian concerns, believed that the only answer for fair governing in Ireland was local rule. Butt was a firm believer in peace and advocated constitutional attempts at independence.¹³⁹

During this period, two camps existed in the English Parliament on the issue of Irish sovereignty.¹⁴⁰ The Liberals were prepared to seal an alliance with the Irish and thus concede some form of home rule.¹⁴¹ Conversely, the Conservatives were interested in building the British Empire, not dismantling it.¹⁴² The official policy of the English was to "kill the Irish with kindness."¹⁴³ Political concessions designed to divert and dissipate the issue of home rule failed to realize that home rule had become a cause of its own separate and distinct from all other grievances.¹⁴⁴

I. *The Easter Rising of 1916*

By the early twentieth century, national desire and the accumulated British promises gave the Irish the impression that home rule was almost inevitable. However, the Act of Union of 1800¹⁴⁵ established precedence the British would not abandon. British resistance continued and the frustrated Irish began to feel that independence could only be won through violence, a feeling manifested in the Easter Rising of 1916.¹⁴⁶

Nationalism rose to new heights in Ireland at the turn of the century. In 1893 the Gaelic League was founded by Douglas Hyde

138. See, e.g., HACHEY, *supra* note 7, at 108-09. Butt was a Protestant lawyer and an Irish member of Parliament. *Id.*

139. *Id.* at 109.

140. Charles Stewart Parnell (1846-1891) was a notable Parliament member whose success stemmed from his ability to mobilize vast portions of the Irish by uniting the land question with home rule. The land question refers to relations between landlords and tenants. With no fixed rents and short leases, the Catholic peasants had their rent raised each year and could be expelled at any time. Parnell knew that home rule was not enough to gather the necessary support of the Irish Catholics; they wanted more. Thus, he synthesized many social issues within the scope of home rule, forming the National Land League.

Following his election in 1875, Parnell immediately put nationalism at the forefront, making home rule and the Irish Question the dominant issues in British politics. ROBERT KEE, *THE BOLD FENIAN MEN* 68-116 (1972) [hereinafter KEE, *FENIAN MEN*].

141. HACHEY, *supra* note 7, at 127-29, 133-34.

142. THOMSON, *NINETEENTH CENTURY*, *supra* note 96, at 182.

143. HACHEY, *supra* note 7, at 135.

144. See *id.* at 136.

145. See *supra* notes 97-99 and accompanying text.

146. See J.J. LEE, *IRELAND 1912-1985*, at 24-25 (1989).

(1860-1949) and Eoin MacNiell (1867-1945).¹⁴⁷ This league advocated the revival of the Gaelic language and culture.¹⁴⁸ This well organized and nationwide league fueled nationalistic fires by denouncing Anglican art, literature, and music in favor of Irish arts.¹⁴⁹ This instigation, combined with the continuing existence of an alien church, absentee aristocracy and starvation in Ireland, led many of the Irish to advocate home rule.¹⁵⁰ This was true in all but the six unionist counties in Ulster which feared such a republic.

Although the Irish members of Parliament pushed for home rule, it stood no chance under a conservative government. Therefore, the Irish were joyous when in 1906 the Liberals seized power over the Conservatives.¹⁵¹ The Liberal Party had secured a majority with the support of the Irish Party, and in return proposed the, partially independent, Irish Council in 1907.¹⁵² The bill was rejected by a national convention packed with conservatives.¹⁵³ Again in 1912 a home rule bill was rejected, prompting the House of Commons to pass a law stating that if a bill was passed three times in the Commons, it was a law regardless of veto by the House of Lords.¹⁵⁴

At the same time, there was much activity in Ireland for and against home rule. Among the political groups supporting home rule were the Irish Republican Brotherhood¹⁵⁵ and the Sinn Fein.¹⁵⁶ In contrast, six of the nine counties in the province of Ulster were supportive of unionism.¹⁵⁷ This was evidenced when 100,000 gathered in Ulster in a rally to support the union in 1912.¹⁵⁸ In addition the people of Ulster took up arms, forming a militia called the Ulster Volunteers to protect the rights of the unionists.¹⁵⁹ In

147. Donal McCartney, *From Parnell to Pearse*, in *THE COURSE OF IRISH HISTORY* 294, 295-96 (T.W. Moody & F.X. Martin eds., 1995).

148. HACHEY, *supra* note 7, at 140. "Gaelic Leaguers insisted that language was more than a means of communication: it expressed cultural values and a mind set. They argued that if the Irish were to be truly free, they must reject the English tongue as a badge of slavery and think and speak Irish." *Id.*

149. *Id.* at 141-42.

150. See T.W. Moody, *Fenianism, Home Rule, and the Land War*, in *THE COURSE OF IRISH HISTORY* 275, 282-83 (T.W. Moody & F.X. Martin eds., 1995).

151. FELIX GILBERT & DAVID C. LARGE, *THE END OF THE EUROPEAN ERA, 1890 TO THE PRESENT* 45 (4th ed. 1991).

152. HACHEY, *supra* note 7, at 145.

153. *Id.*

154. *Id.* at 148-50.

155. The IRB, precursor to the IRA, held that home rule could only be realized by physical force. See *infra* notes 209-13 and accompanying text.

156. See *infra* notes 193-213 and accompanying text.

157. This was due to their Protestant makeup, which dates back to the plantations of James I. See *supra* notes 41-47 and accompanying text.

158. LEE, *supra* note 146, at 13.

159. McCartney, *supra* note 147, at 305; KEE, *FENIAN MEN*, *supra* note 140, at 182.

response, the Irish Volunteers were formed in support of Irish nationalism and grew rapidly due to widening support for home rule.¹⁶⁰ "By June 1914, the Southern Volunteers were estimated at 80,000, as against 84,000 Ulster Volunteers, and by July 9, 1914, they were reckoned by the police to number 132,000."¹⁶¹

As the question of Irish home rule seemed close to a breaking point, an event of far greater concern arose. World War I began in Europe, and the British entered the war on August 4, 1914.¹⁶² Because all concerns were focused on the war, the home rule debate lost steam. As one commentator noted, "[t]he outbreak of war in 1914 put the question of home rule into cold storage, but the heat that had been generated over the past few years was not so readily turned off."¹⁶³

For those in Ireland hoping the British Parliament would grant home rule, a great setback occurred in 1916 when a coalition government was formed in Britain due to war time circumstances.¹⁶⁴ Conversely, those Irish who believed that physical force was necessary to achieve home rule saw the war as a blessing because the British were occupied with the war. Because advocates of government negotiation were confronted with an uncooperative coalition government, a growing tide for revolutionary action occurred. These revolutionaries began to plan what would become the Easter Rising.¹⁶⁵

Dublin was in bad shape in 1911. It "had one of the most underfed, worst-housed, and badly paid populations in Europe."¹⁶⁶ In addition, socialist doctrine advocating revolution was gaining popularity in other areas of Europe.¹⁶⁷ These factors led the planners of the Rising to believe that once a rebellion began the entire country would rise up in arms.¹⁶⁸ The rebellion was planned chiefly by Patrick Pearse (1879-1916) and James Connolly (1868-1916).¹⁶⁹ A German ship would supply the Irish with weapons on Good Friday

160. HACHEY, *supra* note 7, at 151.

161. FRANCIS HACKETT, *THE STORY OF THE IRISH NATION* 367 (1922).

162. GILBERT, *supra* note 151, at 118.

163. McCartney, *supra* note 147, at 306.

164. DAVID THOMSON, *ENGLAND IN THE TWENTIETH CENTURY* 47 (1986) [hereinafter THOMSON, TWENTIETH CENTURY].

165. See LEE, *supra* note 146, at 24.

166. McCartney, *supra* note 147, at 301.

167. GILBERT, *supra* note 151, at 138; McCartney, *supra* note 147, at 302.

168. KEE, *FENIAN MEN*, *supra* note 140, at 255.

169. Although not an advocate of violence, Pearse said of the rebellion, "a thing which stands demonstrable is that nationhood is not achieved otherwise than in arms." Sean O Luing, *Arthur Griffith and Sinn Fein*, in *LEADERS AND MEN OF THE EASTER RISING: DUBLIN 1916*, at 55, 65 (F.X. Martin ed., 1967). Connolly had organized the Irish Transport and General Workers' Union, the Citizen Army, and the Irish Socialist Republican Party. McCartney, *supra* note 147, at 302-03.

1916, and a siege of Dublin would occur on Easter Sunday.¹⁷⁰ Pearse and Connolly assumed that, with German support, they could hold the key points in the city long enough for the rest of the country to mobilize. Although the British criticize the Irish appeal to the Germans, one must consider the British treatment of the Irish in the previous century, and that "[i]n the spring of 1916, in Ireland as elsewhere, many people did think that Germany was going to win the war."¹⁷¹

On April 9, 1916, a German ship, the *Aud*, with a supply of weapons and ammunition left for Ireland. Due to poor planning and communication the ship arrived three days early (April 19),¹⁷² found no contact, and was intercepted by the British.¹⁷³ Because of this blunder, mixed orders—some calling for cancellation, some for the revolutionaries to press on—went out on Saturday, April 22.¹⁷⁴

The revolutionaries made no moves on Easter Sunday, but decided to move ahead on Monday. Unfortunately, they were ignorant of military tactics and totally misjudged the national reaction. That morning "the Volunteer forces in Dublin, under Pearse, and the Citizen Army, under James Connolly, seized the strategic points in the city and from the Post Office proclaimed the Irish Republic."¹⁷⁵

Although Pearse and Connolly seized the key points in the city as they had planned, the crowd was bewildered.¹⁷⁶ "Few people paid attention as hundreds of volunteers and citizen army men assembled at Liberty Hall, and then marched away to various points in the city."¹⁷⁷ The lack of organization and communication failed to motivate the people of Dublin. Furthermore, contradictory orders and reports to other provinces caused a lack of response across the island. "The rising was neither nation-wide [nor] popular, in spite of several years' recruiting for the Irish Volunteers."¹⁷⁸

170. HACHEY, *supra* note 7, at 156-57.

171. GEORGE DANGERFIELD, *THE DAMNABLE QUESTION* 183 (1976).

172. KEE, *FENIAN MEN*, *supra* note 140, at 266-67. The ship arrived on April 19, 1916. *Id.*

173. LEE, *supra* note 146, at 24. The British learned how to crack the secret codes of the Germans, and knew the delivery was to take place. Subsequently, the British navy seized the *Aud*. Yet, while being towed, the German captain sank his own vessel. HACHEY, *supra* note 7, at 157.

174. See HACHEY, *supra* note 7, at 157.

175. HACKETT, *supra* note 161, at 374. At eleven o'clock that morning constable James O'Brien of the Dublin Metropolitan Police Force, who was directing traffic, saw a group of Volunteers marking toward him. Unarmed, he asked the group to halt and was promptly shot dead. The Easter Rising had begun. KEE, *FENIAN MEN*, *supra* note 140, at 254.

176. KEE, *FENIAN MEN*, *supra* note 140, at 253.

177. M.E. COLLINS, *AN OUTLINE OF MODERN IRISH HISTORY 1850-1966*, at 219 (1985).

178. HACKETT, *supra* note 161, at 376.

The British troops, conversely, were well trained and organized.¹⁷⁹ Since the Irish had failed to completely seal off the city, the British advanced reinforcements with ease. The Volunteers numbered about 1,000 in the beginning, and grew to 1,600 by Friday.¹⁸⁰ In contrast, the British had 2,500 troops in the vicinity by the end of the first day, and by Wednesday outnumbered the Irish twenty to one.¹⁸¹ Once the British realized that no Irish reinforcements were coming, they isolated the Irish headquarters and concentrated on it.¹⁸²

Under the shelling of the British, some of the structures occupied by the Irish began to burn.¹⁸³ "There was too much shooting for the fire brigade to be brought out . . ." ¹⁸⁴ so the fire spread.¹⁸⁵ Greatly outnumbered by Friday, Pearse decided to surrender. He sent a Red Cross nurse to the British general Lowe proposing truce talks, but Lowe demanded unconditional surrender. Pearse realized the Republicans had no hope of victory and agreed to total surrender.¹⁸⁶

The reaction to the Easter Rising was one of anger and bewilderment. Five hundred eight Irish casualties were reported, 300 of whom were civilians, and an additional 2,520 were wounded.¹⁸⁷ Dublin was in ruin, having suffered damages of more than two million pounds.¹⁸⁸ The British felt betrayed. During World War I, the Irish not only rebelled, but also contacted and received German support. Given British and Irish anger toward the Volunteers, Pearse's words in the declaration speech delivered on that fateful Monday seem quite ironic: "[h]aving organized and trained her manhood . . . having patiently perfected her discipline, having resolutely

179. See HACHEY, *supra* note 7, at 157.

180. David Fitzpatrick, *Ireland Since 1870*, in *THE OXFORD ILLUSTRATED HISTORY OF IRELAND* 213, 239 (R.F. Foster ed., 1989).

181. EDGAR HOLT, *PROTEST IN ARMS* 91 (1960). "The weakness of the battle plan was that it could be only a matter of a day or two before the volunteers were heavily outnumbered." *Id.*

182. TOM BOWDEN, *THE BREAKDOWN OF PUBLIC SECURITY: THE CASE OF IRELAND 1916-1921 AND PALESTINE 1936-1939*, at 60 (1977). Another mistake made by the Irish was that they expected only to be challenged by rifle and machine gun fire, erroneously assuming that the British would not shell buildings. *Id.*

183. HOLT, *supra* note 181, at 110.

184. *Id.*

185. *Id.*

186. DANGERFIELD, *supra* note 171, at 199-200.

187. HACHEY, *supra* note 7, at 157. Total casualties for the British were 134 dead and 381 wounded. KEE, *FENIAN MEN*, *supra* note 140, at 274.

188. Because the Irish Volunteers and the citizens' army had virtually declared it open season on any man in uniform even if unarmed, the streets were not safe for the police. Cloths, shoes, sweets, and jewelry were stolen in large quantities. KEE, *FENIAN MEN*, *supra* note 140, at 253.

waited for the right moment to reveal herself . . . she strikes in full confidence of victory."¹⁸⁹

Although the Easter Rising was ostensibly a failure, subsequent events illustrate that the martyring of Easter Rising rebels advanced the cause of Irish independence. A strong and consolidated Sinn Fein movement emerged.¹⁹⁰ Eaman de Valera, one of the military leaders of the Easter Rising, was elected as Sinn Fein's leader.¹⁹¹ Support for Irish independence coupled with the disfavor of physical force associated with the failed Easter Rising caused the Sinn Fein to gain popularity.¹⁹²

J. Sinn Fein and the Irish Republican Army

In 1919 Irish Republicans gathered in Dublin and proclaimed Ireland independent of British colonial rule and declared the Mansion House, the seat of Dail Eireann, the new Irish Parliament.¹⁹³ The Sinn Fein¹⁹⁴ became the first nationalist party in Ireland.¹⁹⁵

The Sinn Fein was originally founded in 1905 by Arthur Griffith on the concept of national self-reliance, and held that the Act of Union of 1800 was illegal.¹⁹⁶ Because this Act was illegal, the Sinn Fein called for the immediate withdrawal of Irish Parliament members. The Sinn Fein advocated passive resistance. Two events strengthened the Sinn Fein after the Easter Rising. First, due to German advances, the British Parliament threatened conscription in Ireland.¹⁹⁷ In Ireland, all factions were unified in resistance to conscription, but the Sinn Fein seemed to take credit for the movement. The largest rival of Sinn Fein, the Home Rule Party, stood in opposition to the Sinn Fein's call for withdrawal from the British Parliament. However, when the Home Rule Party eventually did withdraw, many people credited the Sinn Fein for its initial opposition to conscription. Second, the British, paranoid after the Easter Rising, accused the Irish of a "German plot" and subsequently arrested many Sinn Fein members.¹⁹⁸ This action forced the Sinn Fein

189. IRISH HISTORICAL DOCUMENTS 1172-1922, at 317 (Edmund Curtis ed., 1943).

190. LEE, *supra* note 146, at 38-39.

191. *Id.*

192. *Id.*

193. Andrew Hill, *Republic of Ireland: Sinn Fein Meets at Fount of Irish State History*, REUTER NEWSWIRE, Feb. 26, 1995, available in Westlaw, INT-NEWS database.

194. The Translation of "Sinn Fein" is "Ourselves Alone." TIM PAT COOGAN, *THE IRA: A HISTORY* 508 (1994).

195. See Clive Walker, *Political Violence and Democracy in Northern Ireland*, 551 MOD. L. REV. 605, 607 (1988).

196. *Id.* at 608.

197. McCartney, *supra* note 147, at 310.

198. LEE, *supra* note 146, at 40.

underground, gave it a mystical appeal, and caused its membership to swell to over 112,000.¹⁹⁹

In the election of 1918,²⁰⁰ the Home Rule Party shrank from sixty-nine seats to six.²⁰¹ The Unionist Party realized a slight gain from eighteen to twenty-six seats, but the majority of the seats lost by the Home Rule Party were gained by the Sinn Fein, which rose from seven to seventy-three.²⁰² For the first time since the 1870s, nationalists in Ireland were offered an alternative to the Home Rule Party, and they gladly accepted it.

The Sinn Fein platform had promised to set up an Irish Parliament and to appeal to the nations assembled in Versailles to recognize an independent Ireland.²⁰³ On January 21, 1919, a Sinn Fein assembly established the Dail Eireann and declared Irish independence: "[w]e solemnly declare foreign government in Ireland to be an invasion of our national right which we will never tolerate."²⁰⁴ To this day, the Sinn Fein "honours the 1919 declaration of independence . . . from which the IRA still draws its mandate for a merger of Ireland's current twenty-six counties and the North's six into a thirty-two county state."²⁰⁵

Unfortunately, the assembled nations at Versailles had greater concerns and "the Irish bid to be recognized internationally at Versailles failed completely."²⁰⁶ Yet, the Dail Eireann continued to operate, announcing social reforms in hopes of gaining the support of the International Socialist Convention. The socialists were the only body to recognize Ireland before 1922. On April 1, 1919, Eaman de Valera was elected president. The Irish government, although ill-experienced and ill-equipped, was operational.

Although the Sinn Fein became the majority party in 1918, by "the 1927 general election, Sinn Fein was reduced to just five Dail seats, a total which it has never since surpassed."²⁰⁷ Since then, the Sinn Fein has remained a force in the struggle to unite Ireland but has suffered persistent internal dissension.²⁰⁸

199. *Id.* at 40.

200. *Id.* The most important aspect to note about this election is the expansion of the electorate, accomplished by the Representation of the People Act, which allowed women to vote for the first time in British history. Also, the election was the first since 1910. GILBERT, *supra* note 151, at 50-52.

201. LEE, *supra* note 146, at 40.

202. *Id.*

203. *Id.* at 41.

204. EDMUND CURTIS, ed. IRISH HISTORICAL DOCUMENTS 1172-1922, at 319 (1943).

205. Hill, *supra* note 193.

206. OLIVER MACDONAGH, IRELAND 86 (1968).

207. Walker, *supra* note 195, at 608.

208. *See id.*

The Irish Republican Army (IRA) is a militant sister organization of the Sinn Fein. It

emerged in 1918 as a development from the Irish Volunteers (a paramilitary force founded in 1913 as a counter-weight to the Ulster Volunteer [sic] opponents of the Home Rule Bill) but with an ancestry traceable to the Fenian traditions of the previous century, as perpetuated by the Irish Republican Brotherhood (a secret paramilitary group, members of which provided much of the I.R.A.'s leadership).²⁰⁹

The Sinn Fein and the IRA have distinct origins, but an understanding of their relationship is critical to an assessment of recent developments in Ireland. "Despite . . . different origins, and the fact that the I.R.A. revoked its formal allegiance to Sinn Fein in 1925, there has existed between the two a symbiotic relationship which has been cemented by a substantial overlap of leadership and membership."²¹⁰ The Sinn Fein "openly sides with the still outlawed IRA."²¹¹ The relationship between these two groups has been characterized as follows:

Sinn Fein leadership cannot be assumed to have direct control over the IRA leadership or vice versa. Although the two groups clearly coordinate with and support each other, tension existing between the short-term political and military plans of the Republican movement often results in friction. Furthermore, history reflects fundamental splits between those who wished to advance the Republican cause by predominately military means and those who chose predominately political means.²¹²

Although the Sinn Fein supports and encourages the IRA, it does not engage in violence.²¹³

K. *The Anglo-Irish War*

On January 21, 1919, the Irish Declaration of Independence was proclaimed. This declaration rejected English institutions. In response, the British Parliament passed the Government of Ireland Act of 1920.²¹⁴ Under this act Ireland was split in two. Ulster, the

209. *Id.*

210. *Id.*

211. Gregory H. Fox & Georg Nolte, *Intolerant Democracies*, 36 HARV. INT'L L.J. 1, 23 (1995).

212. Clive Walker & Russell L. Weaver, *A Peace Deal For Northern Ireland? The Downing Street Declaration of 1993*, 8 EMORY INT'L L. REV. 817, 838 (1994).

213. Walker, *supra* note 195, at 609.

214. Section 75 of the Government of Ireland Act, 1920, stated:

Notwithstanding the establishment of the Parliaments of Southern and Northern Ireland, or the Parliament of Ireland, or anything contained in this Act, the

northern part of Ireland and its mostly homogeneous Protestant section, would remain part of Great Britain. The rest of Ireland would become a free republic. The Sinn Fein pressed for home rule for all of Ireland.²¹⁵ The idea that Ireland would be subject to foreign occupation was unacceptable, especially at a time when national self-determination was guiding the redrawing of the map of Europe after World War I.

Nonetheless, elections were held for the Ulster Parliament in 1921. King George V came to Ulster to celebrate the opening of its first Parliament.²¹⁶ However, the Sinn Fein participated in those elections and secured most of the seats. Only four non-Sinn Fein ministers were elected, all of whom were Unionist representatives from Trinity College.

Intense violence erupted between April 1920 and July 1921.²¹⁷ The IRA began to practice guerrilla warfare against the British in the North.²¹⁸ Where the uniformed volunteers of the Easter Rising had tried to take and hold buildings, the IRA members in 1920-21 were dressed as citizens and used sporadic attacks before disappearing into the crowd. "It was a struggle characterised by guerrilla warfare, ambushes, raids on police barracks, and planned assassinations on the one side; and reprisals, the shooting-up and burning up of towns, executions and terrorising on the other. . . ."²¹⁹

The IRA was quite effective with its arms raids and guerrilla tactics. Furthermore, it eliminated the problem of infiltration that had crippled the Irish in the past, by dealing with informers very harshly. As the IRA assassinated more police officers, the number of the force decreased. Lack of police and increased violence caused the British to declare martial law. The British gave great incentives to those in Britain who would join the fight in Ireland.

supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters, and things in Ireland and every part thereof.

This section was amended to apply only to Northern Ireland following the Anglo-Irish Treaty of 1922 to read:

Notwithstanding . . . anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in Northern Ireland and every part thereof.

Republic of Ireland: On the Table – Government of Ireland Act, Articles 2 and 3, IRISH TIMES, Aug. 26, 1994, at 1; see also Republic of Ireland: Government of Ireland Act, IRISH TIMES, Feb. 23, 1995.

215. Hill, *supra* note 193.

216. *Two Hundred Years of Turbulence – History, IRISH TIMES, February 23, 1995, available in Westlaw, INT-NEWS database.*

217. See ROBERT KEE, *OURSELVES ALONE 124-25 (1972)* [hereinafter KEE, ALONE].

218. Robert Kee, *Maybe One Day We Will Call This Historic – IRA Ceasefire – Northern Ireland – Focus, SUNDAY TIMES, Sept. 4, 1994.*

219. McCartney, *supra* note 147, at 311.

The result of the appeal for recruits was the infamous auxiliary police group known as the Black and Tans, named for its khaki uniforms.²²⁰ These men were brought to Ireland in droves and quickly gained a reputation for ruthlessness.²²¹ The group was a borderline criminal organization of thugs who quickly gained a bad reputation among the Republicans. The Black and Tans often took the law into their own hands and were generally resented by the Irish. A wave of terrorist acts by both sides ensued.

Despite this increase in force, the IRA was still quite successful in its acts. "The British used enough force to lose sympathy in Ireland without ever using enough to win the war."²²² In fact, the British did not even acknowledge the struggle, choosing to down-play the events in Ireland. The Black and Tans were not considered an army because that would have legitimated the IRA as a fighting force. Since the British could not identify the enemy, they became completely frustrated, and blindly attacked the Irish.²²³

The most notorious incident occurred on Sunday—"Bloody Sunday"²²⁴—November 21, 1920,²²⁵ when twelve British intelligence agents were assassinated in Dublin.²²⁶ Terrified British troops, believing some of the murderers had fled into a football stadium, opened fire, killing twelve.

During the nine months prior to July 1921, 400 of the crown forces, and 707 civilians were killed (700 of the crown forces and 756 civilians were wounded).²²⁷ The British public turned against the government's policy: "[f]rom whichever standpoint the Irish independence struggle is examined, its successful, if partial, completion in 1921 was brought about by the impact of terror."²²⁸ The British people found the Black and Tans' killing of innocent civilians shocking and intolerable.²²⁹ "By mid-1921 British support for the government's Irish policy had weakened markedly."²³⁰

220. See LEE, *supra* note 146, at 43.

221. See *id.*

222. M.E. COLLINS, MODERN IRISH HISTORY 1850-1966, at 253 (1974).

223. For a thorough discussion of the Black and Tans see KEE, ALONE, *supra* note 217, at 92-107.

224. *Id.* at 119-20. This should not be confused with the "Bloody Sunday" in Derry on January 30, 1972. In this latter event British paratroopers gunned down thirteen Catholics in Derry, who were participating in a protest demonstration. HACHEY, *supra* note 7, at 236. Subsequently, an angry mob of Irish burned the British Embassy in Dublin on February 2, 1972. LEE, *supra* note 146, at 461.

225. KEE, ALONE, *supra* note 217, at 119-20.

226. *Id.*

227. *Id.* at 125.

228. TOM BOWDEN, THE BREAKDOWN OF PUBLIC SECURITY 60 (1977).

229. MACDONAGH, *supra* note 206, at 87.

230. *Id.* at 88.

The stalemate which resulted from the inability of either side to defeat its enemy led to a truce in July 1921.²³¹ That month the British offered Ireland dominion status and talks were set up to avoid further violence. The Sinn Fein sent a delegation including Michael Collins and Arthur Griffith to meet with Prime Minister Lloyd George. Five issues were discussed at these peace talks: trade, finance, defense, unity and status. The last two issues were crucial. A boundary commission was established allowing counties sixty days to choose to continue their union with Britain. It was agreed that Ireland's status would be that of a dominion.

On December 6, 1921, the Articles of Agreement for the Anglo-Irish treaty was signed. This treaty read: "Ireland shall have the same constitutional status in the community known as the British Empire as the dominion of Canada . . ." ²³² The treaty was met by Irish ambivalence. Opponents of the treaty claimed that the fight had been to establish Ireland as a republic and to end the British monarchy's reign over Ireland.²³³

Proponents of the treaty were happy to have peace restored. The freedoms received by Ireland and the status of dominionship were considered great victories. The British were not happy making concessions, but they thought little had been conceded for the restoration of peace. The attitude of the British pro-treaty group was summed up by Lloyd George, who said, "[t]he freedom of Ireland increases the strength of the Empire by ending the conflict which has been carried on for centuries . . ." ²³⁴

Although the Dail Eireann approved the treaty, it did so with a vote of sixty-four to fifty-seven. The Irish were bitterly divided once again. Arthur Griffith, founder of the Sinn Fein, wrote that "we went to London, not as republican doctrinaires, but looking for the substance of freedom and independence."²³⁵ Some could not understand why the Republicans could not accept the treaty as a gain, usable for future advantage. Others realized that if the treaty were considered a total Irish victory, hopes of an independent Irish republic would be lost.

The battle between the Republicans and the free state supporters became a full-blown civil war. After much bloodshed, the free state

231. Robert Kee, *Maybe One Day We Will Call This Historic – IRA Ceasefire – Northern Ireland – Focus*, SUNDAY TIMES, Sept. 4, 1994.

232. IRISH HISTORICAL DOCUMENTS 1172-1922, at 322 (Edmund Curtis ed., 1943).

233. MACDONAGH, *supra* note 206, at 86. "It was . . . an ironic finale to the brave flags streaming and the brave men set marching upon Easter Monday." *Id.*

234. IRISH HISTORICAL DOCUMENTS 1172-1922, at 326 (Edmund Curtis ed., 1943).

235. *Id.* at 329.

army succeeded in taking all of the Republican strongholds, forcing the Republicans to resort to "guerrilla war, burnings, ambushes, executions, reprisals, and intimidation."²³⁶ The war continued through the early part of 1923 when the free state government gained control and the Republicans agreed to stop fighting.

The Easter Rising and its violent aftermath led to a "settlement . . . after a bitter and bloody struggle [that] was not what either unionists or nationalists had sought."²³⁷ The partition of the North and South and the oath the Irish in the North were required to make to the Crown remained controversial. The Irish accepted dominion status by a vote of sixty-four to fifty-seven.²³⁸ Home rule, in a lessened form, had been achieved.²³⁹

L. *The Years of de Valera*

The ultimate goal of de Valera was to establish a republic. Shortly after taking office he began severing ties with Britain. He targeted the oath to the crown and the land annuity payments that were to be paid to Britain.

In 1937 a new constitution was proclaimed.²⁴⁰ This constitution declared Ireland to be one nation and referenced the pending re-integration of Ulster.²⁴¹ The constitution did not reference the King or the British Commonwealth. The constitution, although not using the word, declared Ireland a "republic." To this day, "[t]he Irish

236. MACDONAGH, *supra* note 206, at 86.

237. T.W. MOODY, *THE ULSTER QUESTION 1603-1973*, at 25 (1974).

238. Dominion status was changed by the Statute of Westminster passed in 1931, which transformed the British Empire into a commonwealth. The crown was an outward sign of unity, but parliament could no longer control the daily affairs of the dominions. HACHEY, *supra* note 7, at 187.

239. The Civil War of 1922-23, which was fought between the Free State Government and the Republicans within Ireland, is outside the scope of this article, but nonetheless deserves mention. Generally, de Valera refused to accept the new dominion status, and would only accept a republic. Griffith, his rival, was the president of the new free state and earnestly believed in the achievement of dominion status. Hence, Griffith's government took harsh measures to eradicate the Republican opposition. The high point of this struggle came when the Republicans seized the Four Courts building in Dublin for 11 weeks. When the Republicans were captured, the civil war ended. MACDONAGH, *supra* note 206, at 60-69.

240. *Bunreacht na h'Eireann* (Irish Constitution) 1937, reprinted in J.M. KELLEY, *THE IRISH CONSTITUTION* (2d ed. 1984).

241. Article 2 of the Irish Constitution proclaims that "[t]he national territory consists of the whole island of Ireland, its islands and territorial seas." Furthermore, Article 3 states:

Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Eireann and the like extra territorial effect.

Republic of Ireland: On the Table - Government of Ireland Act, Articles 2 and 3, IRISH TIMES, Aug. 26, 1994, at 1.

Constitution of 1937 binds the Irish Government to regard reintegration with Northern Ireland as a 'constitutional imperative.'²⁴²

In response an Anglo-Irish treaty was signed in 1938. Prime Minister Neville Chamberlain relinquished control of British naval ports in Ireland. The British also dropped their demand for annuities. In addition, a trade pact was concluded. In 1949 the British Parliament passed the Ireland Act, ensuring that the county of Ulster would remain part of the United Kingdom unless the Ulster people expressly voted to remove themselves from it.²⁴³ The Ireland Act protected North Ireland Protestants who feared repercussions if they were suddenly subject to rule by the predominately Catholic South. By passing this law, the British Parliament vowed to protect Northern Ireland from the South in the same way it had a duty to protect England, Scotland, or Wales from foreign invasion.

II. THE PRESENT

Two principal hurdles block the merger of the North and South: the British Government, which still directly rules Northern Ireland, and the strong opposition to merger from Northern Ireland Protestants. Dick Spring, Deputy Prime Minister of the Irish Republic, recently described the situation as follows:

In Northern Ireland, two sets of rights, of perceptions, even of vocabularies, confront each other. Two communities, unionist and nationalist, regard each other with suspicion and distrust. There is no consensus on fundamental constitutional principles or the legitimate source of political authority. The only area of agreement seems to be the assumption that the politics of Northern Ireland must inevitably be a "zero sum game" of winners and losers.²⁴⁴

In November 1995, United States President Clinton visited Ireland "as a diplomatic effort to encourage the peace process in Northern Ireland."²⁴⁵ President Clinton's visit is the culmination of recent developments that indicate the current North/South conflict may come to an end.

242. Walker & Weaver, *supra* note 212, at 823. See also *McGimpsey v. Ireland*, 1990 I.R. 110, 119, 10 I.R.L.M. 441, 449 (1990).

243. Kevin Boyle, *Northern Ireland: Allegiances and Identities*, in NATIONAL IDENTITIES: THE CONSTITUTION OF THE UNITED KINGDOM 68, 75 (Bernard Crick ed., 1991).

244. Spring, *supra* note 5, at 7.

245. Marianne Means, *Clinton Hopes Journey Will Bestow a Little Bit of Irish Luck*, VANCOUVER SUN, Aug. 17, 1995, at A19. Clinton "has taken a genuine interest in Northern Ireland, convening a conference to spur local economic development, allowing controversial Sinn Fein President Gerry Adams to visit the White House and raise money in this country and naming former Senate majority leader George Mitchell as his personal envoy there." *Id.*

Three key events have transpired within the past two years which must be examined to determine whether such an end is near. The first is the Downing Street Declaration of 1993. The second is the September 1994 cease-fire. The third is the February 1995 proclamation of the Framework Document.

Before discussing these developments, one prior agreement should be mentioned. The Anglo-Irish Agreement reached on November 15, 1985, was characterized as "a watershed in the complex and bitter 800 years of entanglement of the cultures and political systems on these islands."²⁴⁶ The chief significance of this agreement is that the British recognize that a problem in Northern Ireland exists, however, consent is a prerequisite of merger under that agreement.²⁴⁷ Because the agreement contains mechanisms that prevent full integration of Northern Ireland into the United Kingdom, and also prevent merger with the South,²⁴⁸ its practical effects have been minimal. However, as a foundation for the talks that led to the 1993 Downing Street Declaration, the September 1994 cease-fire and the February 1995 Framework Document, the Anglo-Irish Agreement was symbolically critical as the transition to genuine attempts to maintain peace.

A. *The Downing Street Declaration of 1993*

The United Kingdom and the Irish Republic issued the Downing Street Declaration of 1993 ("1993 Declaration") on December 15, 1993.²⁴⁹ While the goal of peace underlies the 1993 Declaration, some commentators have argued that the 1993 Declaration merely "affirms the positions previously announced by the two Governments."²⁵⁰ For instance, a recent article characterized the 1993 Declaration by arguing that an

[a]nalysis of the 1993 Declaration's text and [a] comparison with earlier documents concerning Northern Ireland thus presents a picture of the two Governments consolidating their existing stances rather than making any radical departures. Given that assessment,

246. Boyle, *supra* note 243, at 75.

247. *See id.* at 75-76.

248. *See id.* at 76.

249. The 1993 Declaration was issued by Prime Minister, the Rt. Hon. John Major M.P., and the Taoiseach, Mr. Albert Reynolds T.D., U.K.-Ir., Cmnd. 2442 (Dec. 15, 1993). The text of the 1993 Declaration is also available in *Task Seen as Overcoming "the Legacy of History,"* IRISH TIMES, Jan. 31, 1994, at 6, available in LEXIS, News Library, Curnws File (also available from Government Publications Sales Office, Sun Alliance House, Molesworth St., Dublin 2, Republic of Ireland). For an excellent discussion of the 1993 Declaration see Walker & Weaver, *supra*, note 112, at 817.

250. *See* Walker & Weaver, *supra* note 212, at 820.

one must conclude that, as an olive branch to the Republican position, the 1993 Declaration has too few leaves to be seen as a generous peace offering.²⁵¹

The 1993 Declaration is extremely ambiguous. Both sides issued questions for clarification shortly after the 1993 Declaration was announced. A commentator noted that "Republican groups spent most of the few months following the 1993 Declaration's signing not on responding to the Declaration but on analyzing its meaning and lobbying for clarification."²⁵² Ambiguous issues include the period of cease-fire that must be sustained before peace talks would be commenced, the meaning of the phrase "commitment to exclusively peaceful methods"²⁵³ and whether the governments should give concessions during the pre-talk cease-fire in order to encourage full participation.²⁵⁴ Nevertheless, the fact that the United Kingdom and Ireland issued an amicable agreement indicates some hope for peace.²⁵⁵

Essentially, the 1993 Declaration indicates no weakening of the union between Northern Ireland and Britain.²⁵⁶ Rather, the agreement seems to affirm British interest in harmony between itself and Northern Ireland, not the union of Ireland.²⁵⁷

The British stance under the 1993 Declaration accords with its neutral position regarding tensions within Ireland.²⁵⁸ For centuries Britain dominated Ireland with little regard for Irish civil rights.

251. *Id.* at 830.

252. *Id.* at 827.

253. 1993 Declaration, *supra* note 249, ¶ 10.

254. See Walker & Weaver, *supra* note 212, at 829.

255. The 1993 Declaration is "potentially the most important Anglo-Irish document since the Treaty of 1921." COOGAN, *supra* note 194, at 486.

256. See *id.* In the 1993 Declaration the British maintain that "they will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland." 1993 Declaration, *supra* note 249, ¶ 4.

257. The 1993 Declaration proclaims that the "primary interest [of the British] is to see peace, stability and reconciliation established by agreement among all the people who inhabit the island, and [that] they will work together with the Irish Government to achieve such an agreement, which will embrace the totality of the relationships." 1993 Declaration, *supra* note 249, ¶ 4.

Behind these emollient words there lay a far from easy diplomatic campaign by the Irish government, culminating in a successful attempt to enlist Bill Clinton's assistance in getting [British Prime Minister] Major to agree to making the Declaration. COOGAN, *supra* note 194, at 486. Coogan claims that he "happened to be in Washington in the days prior to the President's making the decisive phone call and [he] can testify that it was probably the biggest Irish diplomatic initiative since . . . World War II." *Id.*

258. Walker & Weaver, *supra* note 212, at 821. "[T]he current British Government, unlike the main Opposition parties, does not undertake to spread the gospel of a united Ireland and to convince the Unionist brethren of its desirability." *Id.*

However, British gains from continuing to maintain Northern Ireland as part of the United Kingdom are minimal compared to the liabilities involved, including the costs of maintaining troops in Ireland, and British lives lost to the IRA. Northern Ireland Protestants are adamantly opposed to the merger of Ireland. Perhaps Britain is unwilling to allow Northern Ireland Protestants to suffer retribution for centuries of British violations of Irish human rights.

Some Irish nationalists argue that Britain desires to continue its historical suppression of the Irish by maintaining division in Ireland. Sinn Fein president Gerry Adams recently explained that

[t]he British have always taken on a very gradualist, dripfeed, minimalist position because elements . . . in the British establishment perceive that it's in their interests that any settlement . . . suits the British better if it's with a weakened Irish dimension, as opposed to trying to get a permanent end to the conflict.²⁵⁹

Although politically motivated, these statements might contain some element of truth, for Irish unity is not favored in the United Kingdom. "Opinion polls taken in Britain alone over the past two decades consistently have shown majority hostility to the Union."²⁶⁰

Just as the 1993 Declaration merely affirms the previous position of the British, it minimally changes the Irish position.²⁶¹ Although the Republicans have claimed that the 1993 Declaration "declares, in the plainest terms . . . that it would be wrong to impose a united Ireland in the absence of the freely-given consent of the majority of the people of Northern Ireland,"²⁶² this idea is not evidenced in the 1993 Declaration. The subsequent IRA cease-fire ended the violence that marked relations between Northern and Southern Ireland. Nevertheless, the final form of any peace settlement remains unknown. During the 1916 Easter Rising, Patrick Pearse declared "the right of the people of Ireland to the ownership of Ireland and to the unfettered control of Irish destinies, to be sovereign and

259. Anne Connolly, *Interview with the IRA*, AGE, Feb. 8, 1995, at 11.

260. Walker & Weaver, *supra* note 212, at 822 (citing Simon Jenkins, *A Ceasefire is Not Peace*, THE TIMES (London), Aug. 31, 1994; John Darnton, *Turning Point: The IRA Cease-Fire*, N.Y. TIMES, Sept. 5, 1994, § 1, at 1).

261. *See id.* at 823-24. In the 1993 Declaration the Taoiseach "confirms that, in the event of an overall settlement, the Irish Government will, as part of a balanced constitutional accommodation, put forward and support proposals for change in the Irish Constitution which would fully reflect the principle of consent in Northern Ireland." 1993 Declaration, *supra* note 249, ¶ 7. Walker and Weaver note that electoral doubts may explain this position. Walker & Weaver, *supra* note 212, at 825 n.52 (citing Edward Gorman, *Fewer Back Change to Irish Claim on Ulster*, THE TIMES (London), Apr. 19, 1993, at 2).

262. Spring, *supra* note 5, at 9.

indefeasible."²⁶³ Shortly after making this statement Pearse was executed. Nothing suggests the IRA will forget such proclamations and martyrs.

One possible motive of the 1993 Declaration is "to retake the political initiative away from non-governmental players."²⁶⁴ However, as a purely tactical move, the 1993 Declaration seems a risky venture if its only goal is to deflate the paramilitary groups.²⁶⁵ Alternatively, some theorize that the IRA wished to end the struggle. If the IRA were exhausted from its terroristic tactics, the 1993 Declaration presented it with an honorable settlement rather than formal defeat.²⁶⁶ "This perspective explains the vacuous nature of the 1993 Declaration, including the fact that the Declaration failed to advance previously held positions in any significant manner."²⁶⁷ However, the IRA feeds on centuries of frustration. To many Irish, nationalism is a religion, as dear to their hearts as Catholicism. That these Irish grew weary and decided to concede to their arch enemy seems unlikely.

Assuming the motive behind the 1993 Declaration is the solution of problems that have plagued England and Ireland since Pope Adrian IV gave the English kings rights to Ireland in 1156,²⁶⁸ the primary importance of the 1993 Declaration agreement is the official resolution for peace and open dialogue between Britain and the Sinn Fein, which is associated with the IRA. Thus, the dialogue allows Britain an official line of communication with militants: "[I]f lasting peace ever is to be secured, dialogue must arise between the British Government and those who can speak for the paramilitaries."²⁶⁹ In short, "[t]he Declaration makes no pretensions to set up any legislative or executive body. It is, at most, a statement of intent in international law."²⁷⁰

263. COOGAN, *supra* note 194, at 15.

264. Walker & Weaver, *supra* note 212, at 830.

In reality, the British Government never lost the initiative to independent politicians. The British Government, through intermediaries, developed a line of communication with the IRA in talks going back to 1972. The Government could not reveal this fact publicly, however, because such communications contradicted official policy of having no dialogue with terrorists until terrorist activities ceased.

Id. at 831.

265. *Id.* at 831-32.

266. *Id.* at 832.

267. *Id.*

268. See *supra* note 9 and accompanying text.

269. Walker & Weaver, *supra* note 212, at 827.

270. *Id.* at 833.

B. *The Cease-Fire of 1994*

The September 1994 cease-fire was not the first called by the IRA, but it may prove to be the most significant:

Recognising the potential of the current situation and in order to enhance the democratic peace process and underline our definitive commitment to its success, the leadership of [the IRA has] decided that as of midnight, [August 31, 1994,] there will be a complete cessation of military operations

Our struggle has seen many gains and advances made by nationalists and for the democratic position. We believe that an opportunity to create a just and lasting settlement has been created. We are therefore entering into a new situation in a spirit of determination and confidence, determined that the injustices which created this conflict will be removed and confident in the strength and justice of our struggle to achieve this.²⁷¹

Although this article examined the possibility that the IRA may have welcomed the 1993 Declaration because of fatigue,²⁷² undoubtedly, the IRA is still a dangerous threat.²⁷³

The IRA remains the most capable and enduring of all paramilitary groups in Northern Ireland. The IRA also is the most difficult for the Royal Ulster Constabulary . . . to combat, as the IRA draws its support from, and operates in, communities which have often experienced difficult relations with the police.²⁷⁴

Further, the IRA has its counterpart in the various paramilitary groups that advance the cause of Loyalists.

The Loyalist groups generally have been viewed as less cohesive, disciplined and effective than the IRA, and largely as reactive in nature. [However,] [r]ecent years have seen the Loyalist paramilitary groups increase their level of operations and their sophistication.²⁷⁵

271. *The IRA Statement*, IRISH TIMES, Sept. 1, 1994, at 5.

272. See *supra* text accompanying notes 265-67.

273. For instance, Sinn Fein President Gerry Adams recently remarked that his IRA guerrilla supporters "haven't gone away" despite the cease-fire. Hill, *supra* note 193. "Adams was defending himself against charges that he had threatened fresh IRA violence when one of [the] crowd said 'bring back the IRA' as he listed his grievances with Britain. 'They haven't gone away you know,' Adams replied with a smile on his face and to a wave of warm laughter." *Id.* See also Sarah Womack, *Threat of Violence Hinders Talks, Warns Ancram*, PRESS ASSOCIATION NEWSFILE, Aug. 20, 1995, available in LEXIS, News Library, Curnws File.

274. Walker & Weaver, *supra* note 212, at 836-37; see also COOGAN, *supra* note 194.

275. Walker & Weaver, *supra* note 212, at 835. "Loyalists were responsible for more deaths than Republican groups in 1992 and 1993." *Id.* at 835-36.

The Combined Loyalist Military Command also issued a cease-fire on October 13, 1994,²⁷⁶ and thus continued peace in the region is contingent on maintenance of that cease-fire.

Professors Clive Walker and Russell L. Weaver suggest three principal rationales for the cease-fire.²⁷⁷ The first suggested rationale is that the Republican movement simply had a change of heart. Conceivably, the cease-fire was called because the Sinn Fein matured politically and realized that an accord with the British was the only way to realize its goals.²⁷⁸ Walker & Weaver explain that

[p]erhaps the Republican leadership required a decade of education to realize that Unionist intransigence, not British abstinence, presents the fundamental stumbling block to a United Ireland, and that the Unionists must be dealt with by persuasion. One cannot expect that violence realistically will drive Protestant settlers back to Scotland after three centuries any more than one can expect white immigrants to vacate North America or Australia because of historical violations of the rights of indigenous peoples.²⁷⁹

The main criticism of this theory is that the Republicans have not surrendered a united Ireland as their goal.²⁸⁰ Until this ultimate goal is surrendered, the threat of violence continues.²⁸¹

The second theory discussed by Walker and Weaver is that the "cease-fire simply represents Republican admission of temporary exhaustion following 25 years of conflict with vastly superior forces."²⁸² Because no factual foundation for this rationale exists, its veracity is dubious.²⁸³ As previously discussed,²⁸⁴ ample historical support indicates that the IRA will continue to fight.

The third theory for the cease-fire is that "the cease-fire makes military sense when viewed as the strategy most likely to achieve the IRA's present objectives."²⁸⁵ Walker and Weaver note that the IRA stands ready to resume military maneuvers should negotiations

276. See *Framework*, *supra* note 1, ¶ 3.

277. Walker & Weaver, *supra* note 212, at 841-43. "[Although] [n]one [of the rationales] is wholly satisfactory . . . each rationale has, in different ways, likely played a part in the [cease-fire]. . . ." *Id.* at 841.

278. *Id.*

279. *Id.*

280. *Id.*

281. See *supra* text accompanying note 273.

282. Walker & Weaver, *supra* note 212, at 841-42.

283. See *id.* at 842.

284. See *supra* notes 265-67 and accompanying text; see also *supra* note 275 and accompanying text.

285. Walker & Weaver, *supra* note 212, at 842.

falter.²⁸⁶ Given the history of the IRA and the Irish, submission seems unlikely.²⁸⁷

The cease-fire may be a step toward peace, but not ultimate peace. The Protestants and the Catholics sustain great ideological barriers in Ireland. While some sources suggest that there has been a split in the IRA after the declared cease-fire between those who support the cease-fire and those dissatisfied with it, Sinn Fein President Gerry Adams denies this:²⁸⁸ "The shooting may be over for a time, but the battle for hearts and minds goes on."²⁸⁹

C. *The Framework Document*

On February 23, 1995, the joint Anglo-Irish declaration known as the Framework Document was issued.²⁹⁰ In this document both the British and Irish governments officially

recognise that there is much for deep regret on all sides in the long and often tragic history of Anglo-Irish relations, and of relations in Ireland. They believe it is now time to lay aside, with dignity and forbearance, the mistakes of the past. A collective effort is needed to create, through agreement and reconciliation, a new beginning founded on consent, for relationships within Northern Ireland, within the island of Ireland and between the peoples of these islands.²⁹¹

However, history has proven that such words, even if visionary, do not equate to a lasting solution.

The Framework Document discusses three strands of institutions in Northern Ireland.²⁹² These strands are political structures establishing relations between Northern and Southern Ireland, "East-West structures" and Anglo-Irish relations.²⁹³ The document further states that

[a] vital dimension of this three stranded process is the search . . . for new institutions and structures to take account of the totality of relationships and to enable the people of Ireland to work together in all areas of common interest while fully respecting their diversity.²⁹⁴

286. *Id.*

287. *See supra* notes 273-75 and accompanying text.

288. Anne Connolly, *Interview with the IRA*, AGE, Feb. 8, 1995, at 11.

289. Walker & Weaver, *supra* note 212, at 844.

290. *See Framework*, *supra* note 1.

291. *Id.* ¶. 2.

292. *Id.* ¶. 13.

293. *Id.* ¶. 13(b).

294. *Id.* ¶. 5.

The Framework Document seeks to establish a unique and innovative legislative body "with a clear identity and purpose, to enable representatives of democratic institutions, North and South, to enter into new, cooperative and constructive relationships, [and] to promote agreement among the people of the island of Ireland . . ."295

The legislative body would require North and South department heads to "discharge or oversee delegated executive, harmonising or consultative functions . . ."296 However, the Framework Document, while giving the legislative body responsibility for relations with the European Community and European Union, defers other responsibilities to a future North/South agreement.²⁹⁷

Importantly, Northern and Southern Ireland will be legislating together. Perhaps the respective Parliaments will initially reserve critical functions for themselves, but as this working relationship progresses, conceivably the body's authority will grow. The body will function as a consulting body at first, then a body for harmonization, and finally one of executive action.²⁹⁸

The parties also agree to maintain a "standing Intergovernmental Conference."²⁹⁹ This conference will be chaired by the designated Irish Minister and by the Secretary of State for Northern Ireland.³⁰⁰

The Conference will be a forum through which the two Governments will work together in pursuance of their joint objectives of securing agreement and reconciliation amongst the people of the

295. *Id.* ¶. 13(b).

296. *Id.* ¶. 25.

297. *Id.* However, the Framework Document does require that in considering what to designate to this body the two member governments must take into account:

- (i) the common interest in a given matter on the part of both parts of the island; or
- (ii) the mutual advantage of addressing a matter together; or (iii) the mutual benefit which may derive from it being administered by the North/South body; or (iv) the achievement of economies of scale . . .

Id.

298. *Framework, supra* note 1, ¶ 27. The three designated functions, consultative, harmonising and executive are defined as follows:

consultative: the North/South body would be a forum where the two sides would consult on any aspect of designated matters on which either side wished to hold consultations . . .

harmonising: in respect of these designated responsibilities there would be, in addition to the duty to exchange information and to consult on the formulation of policy, and obligation on both sides to use their best endeavours to reach agreement on a common policy . . .

executive: in the case of these designated responsibilities the North/South body would itself be directly responsible for the establishment of an agreed policy and for its implementation on a joint basis . . .

Id. ¶ 29.

299. *Framework, supra* note 1, ¶ 40.

300. *Id.*

island of Ireland and of laying the foundations for a peaceful and harmonious future based on mutual trust and understanding between them.³⁰¹

The specifics of this conference are not detailed. Essentially, the Framework Document affirms Britain's prior policy of a "new political framework founded on *consent*."³⁰² The document expressly reiterates the British policy of allowing a merger only where Northern Ireland consents.³⁰³ Hence, Britain has determined that unity is for the people of Ireland to decide "without external impediment,"³⁰⁴ but Britain also expressly affirms that it "will uphold the democratic wish of a greater number of the people of Northern Ireland . . ."³⁰⁵ Ironically, the 1993 Declaration expounds the notion of self-determination,³⁰⁶ which the British have denied the Irish for centuries.³⁰⁷ Northern Ireland presumably desires self-determination because it allows the six counties in Ulster autonomy from the other twenty-six counties in Ireland, regardless of a majority referendum of the entire Irish population. Such an agreement directly undermines the 1937

301. *Id.* ¶ 41.

302. *Framework, supra* note 1, ¶ 5 (emphasis added).

303. The document expressly mandates that any "[n]ew arrangements . . . should acknowledge that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of the people of Northern Ireland." *Id.* ¶ 17.

304. *Framework, supra* note 1, ¶ 16.

305. *Id.* ¶ 20.

306. *Id.* ¶ 16.

307. The core aim of the document seems to be to establish peace; however, the document assumes that the sole point of contention is the tensions between the North and the South. However, the foundation of the tension can be said to lie in the Anglo-Irish historical relationship. Given this, it is ironic that the British are not willing to set up Northern Ireland as its own nation. The document would allow the North and South to be merged upon a separate vote in the North and South, but until that time Northern Ireland will remain part of the United Kingdom. There is something inherently flawed in that conclusion, and that is that the British are still involved. Surely the British would be commended for protecting the rights of the Northern Irish if the South attempted to invade, overrun or generally force its will on the North, but this does not include extending the British sphere of influence throughout all aspects of Northern Ireland's politics. Hence, although the document purports to forge peace in Ireland, it does nothing to remove the British, who are in many ways the root of the problem. This is evidenced in sections that read as follows:

[i]n the event that the devolved institutions in Northern Ireland ceased to operate, and direct rule from Westminster was reintroduced, the British Government agree that other arrangements would be made to implement the commitment to promote cooperation at all levels

Framework, supra note 1, ¶ 47.

As evidence that the British presence in Ireland is a fundamental source of tension, which the Framework document fails to address, is a statement made by Sinn Fein President Gerry Adams on August 13, 1995. In response to Catholic clashes with the police in Northern Ireland, Adams remarked: "It is the British government policy which determined the violent outcome of this morning's events . . ." *Overnight Clashes Between Nationalists and Police*, AGENCE FRANCE PRESSE, Aug. 13, 1995, available in LEXIS, News Library, Curnws File.

Irish Constitution,³⁰⁸ which is currently in effect, and stymies the IRA's goals.

The Irish Constitution requires the Republican government to consider the integration of the North and South as a constitutional imperative, but the Framework document reflects a general agreement by the Republic that the North and South will only be integrated with the North's consent. The Framework Document provides a solution for this dilemma: a constitutional amendment in the Republic's 1937 constitution.³⁰⁹ The Republic, on February 23, 1995, basically agreed to abandon the hopes and aspirations of countless nationalist patriots, many of whom gave their lives to the cause. Patrick Pearse's words of the Easter Rising in 1916 again illustrate this point: "In the name of God and of the dead generations . . . Ireland . . . summons her children to her flag and strikes for her freedom."³¹⁰

The Framework Document must "overcome the legacy of division"³¹¹ and, more importantly, must satisfy the Sinn Fein and the IRA. Although the document states that "[e]veryone now has a role to play in moving irreversibly beyond the failures of the past and creating new relationships capable of perpetuating peace with freedom and justice,"³¹² the national concerns of the Sinn Fein and the IRA are underrepresented. As long as a Protestant majority in Northern Ireland retains the power to veto any merger with the South, Ireland will never be unified.³¹³ The Sinn Fein and IRA will not be satisfied with this solution.³¹⁴ Although the goal of the Framework Document is a lasting resolution "without compromising the essential principles or the long term aspirations or interests of either tradition or community,"³¹⁵ recent occurrences indicate the contrary:³¹⁶

308. *Supra* notes 240-42 and accompanying text.

309. *Framework*, *supra* note 1, ¶ 21.

310. COOGAN, *supra* note 194, at 15.

311. *Framework*, *supra* note 1, ¶ 12.

312. *Id.* ¶ 4.

313. In 1990 the religious, and thus, ideological and political, breakdown of Northern Ireland was 23% Presbyterian, 18% Anglican, and other Protestants constituting 8%, for a total of 49% Protestant. Catholics constituted only 36% of the population in that same region. Boyle, *supra* note 243, at 71.

314. *See supra* note 273 and accompanying text.

315. *Framework*, *supra* note 1, ¶ 7.

316. "[T]here is every sign that the two ideologies of Unionism—the desire to stay British—and Republicanism—the dream of a united Ireland—will continue to test each other and to clash . . ." Andrew Hill, *Unrest Heralds Northern Irish Peace Anniversary*, REUTERS WORLD SERVICE, Aug. 14, 1995, available in LEXIS, News Library, Curnws File.

Nationalist demonstrators clashed with police overnight in several towns across Northern Ireland after similar confrontations left 30 injured earlier in the day in Belfast and Londonderry . . .

In Londonderry around 100 youths from the Catholic Bogside district hurled petrol bombs at police, also causing damage to shops, while in Belfast a bus was hijacked and set on fire by demonstrators.³¹⁷

A return "to the violence which [has] caused such immense suffering and waste and served only to reinforce the barriers of fear and hatred, impeding the search for agreement"³¹⁸ has occurred.

Perhaps the formation of the North/South legislative body will cause nationalists to become complacent because they assume full integration. Complacency can turn into acceptance or indifference. The IRA's cease-fire has not atrophied the organization: "Sporadic violence recently halted the talks between the British government and Sinn Fein, the political arm of the Irish Republican Army, aimed at settling a guerrilla war that has raged for 25 years."³¹⁹

Britain and Ireland's "agreement . . . does not guarantee agreement between unionists and nationalists in Northern Ireland."³²⁰ "Anglo-Irish relations and developments ultimately have to change everyday perceptions of, and relations between, the two communities within Northern Ireland."³²¹

III. THE FUTURE

Given Anglo-Irish history, recent attempts to achieve peace in Northern Ireland seem bleak. The Framework Document proclaims a "new beginning,"³²² and seeks to address "fundamental issues in a new way. It inevitably requires significant movement from all sides,"³²³ but until the desires of the people are addressed, violence is always possible.

317. *Overnight Clashes Between Nationalists and Police*, AGENCE FRANCE PRESSE, Aug. 13, 1995, available in LEXIS, News Library, Curnws File.

318. *Framework*, *supra* note 1, ¶ 3.

319. Means, *supra* note 245, at A19. Reports like this, as recent as August 17, 1995, five months after the historical proclamation of the Framework Document, and nearly a year after the cease-fire was called illustrate that the violent tactics of the IRA are more of an unfortunate reality than a regrettable memory.

320. Spring, *supra* note 5, at 12.

321. Walker & Weaver, *supra* note 212, at 843.

322. *Framework*, *supra* note 1, at ¶ 8.

323. *Id.* The remainder of this paragraph reads:

This document is not a rigid blueprint to be imposed but both Governments believe it sets out a realistic and balanced framework for agreement which could be achieved, with flexibility and goodwill on all sides, in comprehensive negotiations with the relevant political parties in Northern Ireland.

The first anniversary of the cease-fire recently passed, however, reports from Ireland are not encouraging:

As the British province [Northern Ireland] counts down to the first anniversary of the IRA ceasefire that silenced guerrilla guns, fresh street violence has laid bare a gulf between Protestants and Catholics which an Anglo-Irish peace process has failed to bridge. British and Irish civil servants are working behind the scenes to try to find a formula to revive a joint peace process that is at a virtual standstill.³²⁴

These reports are accompanied by continuing reports of street violence and clashes with authorities.³²⁵ While it was predictable that neither the IRA nor the Sinn Fein would make any drastic moves until after President Clinton made his historic visit,³²⁶ since that visit has past violence may erupt at any time. The current impasse on talks caused by the British insistence that the IRA turn over their weapons before talks can continue has already led some in the Sinn Fein to describe the recent street violence as "nails being hammered into the peace process."³²⁷

To obtain peace in Northern Ireland, the British, while maintaining that no merger should occur without the North's consent, should withdraw all political control of Northern Ireland, leaving the Irish people to choose their fate. The North and South can only unite with the consent of both and the absence of outside control.

Id.

324. HILL, *supra* note 50.

325. *Id.*

326. "They're not going to throw away the White House card" *Id.*

327. *Northern Ireland Divided by History*, THE SCOTSMAN, Aug. 14, 1995, at 2.

APPENDIX I

THE FRAMEWORK DOCUMENT

1. The Joint Declaration acknowledges that the most urgent and important issue facing the people of Ireland, North and South, and the British and Irish Governments together, is to remove the causes of conflict, to overcome the legacy of history and to heal the divisions which have resulted.
2. Both Governments recognise that there is much for deep regret on all sides in the long and often tragic history of Anglo Irish relations, and of relations in Ireland. They believe it is now time to lay aside, with dignity and forbearance, the mistakes of the past. A collective effort is needed to create, through agreement and reconciliation, a new beginning founded on consent, for relationships within Northern Ireland, within the island of Ireland and between the peoples of these islands. The Joint Declaration itself represents an important step towards this goal, offering the people of Ireland, North and South, whatever their tradition, the basis to agree that from now on their differences can be negotiated and resolved exclusively by peaceful political means.
3. The announcements made by the Irish Republican Army on 31 August 1994 and the Combined Loyalist Military Command on 13 October 1994 are a welcome response to the profound desire of people throughout these islands for a permanent end to the violence which caused such immense suffering and waste and served only to reinforce the barriers of fear and hatred, impeding the search for agreement.
4. A climate of peace enables the process of healing to begin. It transforms the prospects for political progress, building on that already made in the Talks process. Everyone now has a role to play in moving irreversibly beyond the failures of the past and creating new relationships capable of perpetuating peace with freedom and justice.
5. In the Joint Declaration both Governments set themselves the aim of fostering agreement and reconciliation, leading to a new political framework founded on consent. A vital dimension of this three stranded process is the search, through dialogue with the relevant Northern Ireland parties, for new institutions and structures to take account of the totality of relationships and to enable the people of Ireland to work together in all areas of common interest while fully respecting their diversity.
6. Both Governments are conscious of the widespread desire, throughout both islands and more widely, to see negotiations underway as soon as possible. They also acknowledge the many requests from

parties in Northern Ireland and elsewhere, for both Governments to set out their views on how agreement might be reached on relationships within the island of Ireland and between the peoples of these islands.

7. In this Framework Document both Governments therefore describe a shared understanding reached between them on the parameters of a possible outcome to the Talks process, consistent with the Joint Declaration and the statement of 26 March 1991. Through this they hope to give impetus and direction to the process and to show that a fair and honourable accommodation can be envisaged across all the relationships, which would enable people to work constructively for their mutual benefit, without compromising the essential principles or the long term aspirations or interests of either tradition or of either community.

8. Both Governments are aware that the approach in this document presents challenges to strongly held positions on all sides. However, a new beginning in relationships means addressing fundamental issues in a new way and inevitably requires significant movement from all sides. This document is not a rigid blueprint to be imposed but both Governments believe it sets out a realistic and balanced framework for agreement which could be achieved, with flexibility and goodwill on all sides, in comprehensive negotiations with the relevant political parties in Northern Ireland. In this spirit, both Governments offer this document for consideration and accordingly strongly commend it to the parties, the people in the island of Ireland and more widely.

9. The primary objective of both Governments in their approach to Northern Ireland is to promote and establish agreement among the people of the island of Ireland, building on the Joint Declaration. To this end they will both deploy their political resources with the aim of securing a new and comprehensive agreement involving the relevant political parties in Northern Ireland and commanding the widest possible support.

10. They take as guiding principles for their co operation in search of this agreement:

(i) the principle of self determination, as set out in the Joint Declaration;

(ii) that the consent of the governed is an essential ingredient for stability in any political arrangement;

(iii) that agreement must be pursued and established by exclusively democratic, peaceful means, without resort to violence or coercion;

(iv) that any new political arrangements must be based on full respect for and protection and expression of, the rights and identities

of both traditions in Ireland and even handedly afford both communities in Northern Ireland parity of esteem and treatment, including equality of opportunity and advantage.

11. They acknowledge that in Northern Ireland, unlike the situation which prevails elsewhere throughout both islands, there is a fundamental absence of consensus about constitutional issues. There are deep divisions between the members of the two main traditions living there over their respective senses of identity and allegiance, their views on the present status of Northern Ireland and their vision of future relationships in Ireland and between the two islands.

However, the two Governments also recognise that the large majority of people, in both parts of Ireland, are at one in their commitment to the democratic process and in their desire to resolve political differences by peaceful means.

12. In their search for political agreement, based on consent, the two Governments are determined to address in a fresh way all of the relationships involved. Their aim is to overcome the legacy of division by reconciling the rights of both traditions in the fullest and most equitable manner. They will continue to work towards and encourage the achievement of agreement, so as to realise the goal set out in the statement of 26 March 1991 of "a new beginning for relationships within Northern Ireland, within the island of Ireland and between the peoples of these islands".

13. The two Governments will work together with the parties to achieve a comprehensive accommodation, the implementation of which would include interlocking and mutually supportive institutions across the three strands, including:

(a) Structures within Northern Ireland (paragraphs 22 and 23)—to enable elected representatives in Northern Ireland to exercise shared administrative and legislative control over all those matters that can be agreed across both communities and which can most effectively and appropriately be dealt with at that level;

(b) North/South institutions (paragraphs 24-38)—with clear identity and purpose, to enable representatives of democratic institutions, North and South, to enter into new, co operative and constructive relationships, to promote agreement among the people of the island of Ireland; to carry out on a democratically accountable basis delegated executive, harmonising and consultative functions over a range of designated matters to be agreed; and to serve to acknowledge and reconcile the rights, identities and aspirations of the two major traditions;

(c) East West structures (paragraphs 39-49) to enhance the existing basis for co operation between the two Governments, and to promote, support and underwrite the fair and effective operation of the new arrangements.

Constitutional Issues

14. Both Governments accept that agreement on an overall settlement requires, inter alia, a balanced accommodation of the differing views of the two main traditions on the constitutional issues in relation to the special position of Northern Ireland.

15. Given the absence of consensus and depth of divisions between the two main traditions in Northern Ireland, the two Governments agree that such an accommodation will involve an agreed new approach to the traditional constitutional doctrines on both sides. This would be aimed at enhancing and codifying the fullest attainable measure of consent across both traditions in Ireland and fostering the growth of consensus between them.

16. In their approach to Northern Ireland they will apply the principle of self determination by the people of Ireland on the basis set out in the Joint Declaration: the British Government recognise that it is for the people of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish; the Irish Government accept that the democratic right of self determination by the people of Ireland as a whole must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.

17. New arrangements should be in accordance with the commitments in the Anglo Irish Agreement and in the Joint Declaration. They should acknowledge that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of the people of Northern Ireland. If in future a majority of the people there wish for and formally consent to the establishment of a united Ireland, the two Governments will introduce and support legislation to give effect to that wish.

18. Both Governments recognise that Northern Ireland's current constitutional status reflects and relies upon the present wish of a majority of its people. They also acknowledge that at present a substantial minority of its people wish for a united Ireland. Reaffirming the commitment to encourage, facilitate and enable the achievement of agreement over a period among all the people who inhabit the island, they acknowledge

that the option of a sovereign united Ireland does not command the consent of the unionist tradition, nor does the existing status of Northern Ireland command the consent of the nationalist tradition. Against this background, they acknowledge the need for new arrangements and structures—to reflect the reality of diverse aspirations, to reconcile as fully as possible the rights of both traditions, and to promote co operation between them, so as to foster the process of“ developing agreement and consensus between all the people of Ireland.

19. They agree that future arrangements relating to Northern Ireland, and Northern Ireland’s wider relationships, should respect the full and equal legitimacy and worth of the identity, sense of allegiance, aspiration and ethos of both the unionist and nationalist communities there.

Consequently, both Governments commit themselves to the principle that institutions and arrangements in Northern Ireland and North/South institutions should afford both communities secure and satisfactory political, administrative and symbolic expression and protection. In particular, they commit themselves to entrenched provisions guaranteeing equitable and effective political participation for whichever community finds itself in a minority position by reference to the Northern Ireland framework, or the wider Irish framework, as the case may be, consequent upon the operation of the principle of consent.

20. The British Government reaffirm that they will uphold the democratic wish of a greater number of the people of Northern Ireland on the issue of whether they prefer to support the Union or a sovereign united Ireland. On this basis, they reiterate that they have no selfish strategic or economic interest in Northern Ireland. For as long as the democratic wish of the people of Northern Ireland is for no change in its present status, the British Government pledge that their jurisdiction there will be exercised with rigorous impartiality on behalf of all the people of Northern Ireland in their diversity. It will be founded on the principles outlined in the previous paragraph with emphasis on full respect for, and equality of, civil, political, social and cultural rights and freedom from discrimination for all citizens, on parity of esteem, and on just and equal treatment for the identity, ethos and aspirations of both communities. The British Government will discharge their responsibilities in a way which does not prejudice the freedom of the people of Northern Ireland to determine, by peaceful and democratic means, its future constitutional status, whether in remaining a part of the United Kingdom or in forming part of a united Ireland. They will be equally cognizant of either option and open to its democratic realisation, and will not impede the latter option, their primary interest being to see peace, stability and reconciliation established by agreement among the

people who inhabit the island. This new approach for Northern Ireland, based on the continuing willingness to accept the will of a majority of the people there, will be enshrined in British constitutional legislation embodying the principles and commitments in the Joint Declaration and this Framework Document, either by amendment of the Government of Ireland Act 1920 or by its replacement by appropriate new legislation, and appropriate new provisions entrenched by agreement.

21. As part of an agreement confirming the foregoing understanding between the two Governments on constitutional issues, the Irish Government will introduce and support proposals for change in the Irish Constitution to implement the commitments in the Joint Declaration. These changes in the Irish Constitution will fully reflect the principle of consent in Northern Ireland and demonstrably be such that no territorial claim of right to jurisdiction over Northern Ireland contrary to the will of a majority of its people is asserted, while maintaining the existing birthright of everyone born in either jurisdiction in Ireland to be part, as of right, of the Irish nation. They will enable a new Agreement to be ratified which will include, as part of a new and equitable dispensation for Northern Ireland embodying the principles and commitments in the Joint Declaration and this Framework Document, recognition by both Governments of the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its constitutional status, whether they prefer to continue to support the Union or a sovereign united Ireland.

Structures in Northern Ireland

22. Both Governments recognise that new political structures within Northern Ireland must depend on the cooperation of elected representatives there. They confirm that cross community agreement is an essential requirement for the establishment and operation of such structures. They strongly favour and will support provision for cross community consensus in relation to decisions affecting the basic rights, concerns and fundamental interests of both communities, for example on the lines adumbrated in Strand 1 discussions in the 1992 round table talks.

23. While the principles and overall context for such new structures are a recognised concern of both Governments in the exercise of their respective responsibilities, they consider that the structures themselves would be most effectively negotiated, as part of a comprehensive three stranded process, in direct dialogue involving the relevant political parties in Northern Ireland who would be called upon to operate them.

North/South Institutions

24. Both Governments consider that new institutions should be created to cater adequately for present and future political, social and economic inter connections on the island of Ireland, enabling representatives of the main traditions, North and South, to enter agreed dynamic, new, co operative and constructive relationships.

25. Both Governments agree that these institutions should include a North/South body involving Heads of Department on both sides and duly established and maintained by legislation in both sovereign Parliaments. This body would bring together these Heads of Department representing the Irish Government and new democratic institutions in Northern Ireland, to discharge or oversee delegated executive, harmonising or consultative functions, as appropriate, over a range of matters which the two Governments designate in the first instance in agreement with the parties or which the two administrations, North and South, subsequently agree to designate. It is envisaged that, in determining functions to be discharged or overseen by the North/South body, whether by executive action, harmonisation or consultation, account will be taken of:

- (i) the common interest in a given matter on the part of both parts of the island; or
- (ii) the mutual advantage of addressing a matter together; or
- (iii) the mutual benefit which may derive from it being administered by the North/South body; or
- (iv) the achievement of economies of scale and the avoidance of unnecessary duplication of effort.

In relevant posts in each of the two administrations participation in the North/South body would be a duty of service. Both Governments believe that the legislation should provide for a clear institutional identity and purpose for the North/South body. It would also establish the body's terms of reference, legal status and arrangements for political, legal, administrative and financial accountability. The North/South body could operate through, or oversee, a range of functionally related subsidiary bodies or other entities established to administer designated functions on an all island or cross border basis.

26. Specific arrangements would need to be developed to apply to EU matters. Any EU matter relevant to the competence of either administration could be raised for consideration in the North/South body. Across all designated matters and in accordance with the delegated functions, both Governments agree that the body will have an important role, with their support and co operation and in consultation

with them, in developing on a continuing basis an agreed approach for the whole island in respect of the challenges and opportunities of the European Union. In respect of matters designated at the executive level, which would include all EC programmes and initiatives to be implemented on a cross border or island wide basis in Ireland, the body itself would be responsible, subject to the Treaty obligations of each Government, for the implementation and management of EC policies and programmes on a joint basis. This would include the preparation, in consultation with the two Governments, of joint submissions under EC programmes and initiatives and their joint monitoring and implementation, although individual projects could be implemented either jointly or separately.

27. Both Governments envisage regular and frequent meetings of the North/South body:

- to discharge the functions agreed for it in relation to a range of matters designated for treatment on an all Ireland or cross border basis;
- to oversee the work of subsidiary bodies.

28. The two Governments envisage that legislation in the sovereign Parliaments should designate those functions which should, from the outset, be discharged or overseen by the North/South body: and they will seek agreement on these, as on other features of North/South arrangements in discussion with the relevant political parties in Northern Ireland.

It would also be open to the North/South body to recommend to the respective administrations and legislatures for their consideration that new functions should be designated to be discharged or overseen by that body; and to recommend that matters already designated should be moved on the scale between consultation, harmonisation and executive action.

Within those responsibilities transferred to new institutions in Northern Ireland, the British Government have no limits of their own to impose on the nature and extent of functions which could be agreed for designation at the outset or, subsequently, between the Irish Government and the Northern Ireland administration. Both Governments expect that significant responsibilities, including meaningful functions at executive level, will be a feature of such agreement. The British Government believe that, in principle, any function devolved to the institutions in Northern Ireland could be so designated, subject to any necessary savings in respect of the British Government's powers and duties, for example to ensure compliance with EU and international

obligations. The Irish Government also expect to designate a comparable range of functions.

29. Although both Governments envisage that representatives of North and South in the body could raise for discussion any matter of interest to either side which falls within the competence of either administration, it is envisaged, as already mentioned, that its designated functions would fall into three broad categories:

- consultative: the North/South body would be a forum where the two sides would consult on any aspect of designated matters on which either side wished to hold consultations. Both sides would share a duty to exchange information and to consult about existing and future policy, though there would be no formal requirement that agreement would be reached or that policy would be harmonised or implemented jointly, but the development of mutual understanding or common or agreed positions would be the general goal;
- harmonising: in respect of these designated responsibilities there would be, in addition to the duty to exchange information and to consult on the formulation of policy, an obligation on both sides to use their best endeavours to reach agreement on a common policy and to make determined efforts to overcome any obstacles in the way of that objective, even though its implementation might be undertaken by the two administrations separately;
- executive: in the case of these designated responsibilities the North/South body would itself be directly responsible for the establishment of an agreed policy and for its implementation on a joint basis. It would however be open to the body, where appropriate, to agree that the implementation of the agreed policy would be undertaken either by existing bodies, acting in an agency capacity, whether jointly or separately, North and South, or by new bodies specifically created and mandated for this purpose.

30. In this light, both Governments are continuing to give consideration to the range of functions that might, with the agreement of the parties, be designated at the outset and accordingly they will be ready to make proposals in that regard in future discussions with the relevant Northern Ireland parties.

31. By way of illustration, it is intended that these proposals would include at the executive level a range of functions, clearly defined in scope, from within the following broad categories:

- sectors involving a natural or physical all Ireland framework;
- EC programmes and initiatives,
- marketing and promotion activities abroad;

- culture and heritage.

32. Again, by way of illustration, the Governments would make proposals at the harmonising level for a broader range of functions, clearly defined in scope (including, as appropriate, relevant EU aspects), from within the following categories:

aspects of-

- agriculture and fisheries;
- industrial development;
- consumer affairs;
- transport;
- energy;
- trade;
- health;
- social welfare;
- education;
- and economic policy.

33. By way of example, the category of agriculture and fisheries might include agricultural and fisheries research, training and advisory services, and animal welfare; health might include co operative ventures in medical, paramedical and nursing training, cross border provision of hospital services and major emergency/accident planning; and education might include mutual recognition of teacher qualifications, co operative ventures in higher education, in teacher training, in education for mutual understanding and in education for specialised needs.

34. The Governments also expect that a wide range of functions would be designated at the consultative level.

35. Both Governments envisage that all decisions within the body would be by agreement between the two sides. The Heads of Department on each side would operate within the overall terms of reference mandated by legislation in the two sovereign Parliaments. They would exercise their powers in accordance with the rules for democratic authority and accountability for this function in force in the Oireachtas and in new institutions in Northern Ireland. The operation of the North/South body's functions would be subject to regular scrutiny in agreed political institutions in Northern Ireland and the Oireachtas respectively.

36. Both Governments expect that there would be a Parliamentary Forum, with representatives from agreed political institutions in Northern Ireland and members of the Oireachtas, to consider a wide range of matters of mutual interest.

37. Both Governments envisage that the framework would include administrative support staffed jointly by members of the Northern Ireland Civil Service and the Irish Civil Service.

They also envisage that both administrations will need to arrange finance for the North/South body and its agencies on the basis that these constitute a necessary public function.

38. Both Governments envisage that this new framework should serve to help heal the divisions among the communities on the island of Ireland; provide a forum for acknowledging the respective identities and requirements of the two major traditions; express and enlarge the mutual acceptance of the validity of those traditions; and promote understanding and agreement among the people and institutions in both parts of the island. The remit of the body should be dynamic, enabling progressive extension by agreement of its functions to new areas. Its role should develop to keep pace with the growth of harmonisation and with greater integration between the two economies.

East West Structures

39. Both Governments envisage a new and more broadly based Agreement, developing and extending their cooperation, reflecting the totality of relationships between the two islands, and dedicated to fostering co operation, reconciliation and agreement in Ireland at all levels.

40. They intend that under such a new Agreement a standing Intergovernmental Conference will be maintained, chaired by the designated Irish Minister and by the Secretary of State for Northern Ireland. It would be supported by a Permanent Secretariat of civil servants from both Governments.

41. The Conference will be a forum through which the two Governments will work together in pursuance of their joint objectives of securing agreement and reconciliation amongst the people of the island of Ireland and of laying the foundations for a peaceful and harmonious future based on mutual trust and understanding between them.

42. The Conference will provide a continuing institutional expression for the Irish Government's recognised concern and role in relation to Northern Ireland. The Irish Government will put forward views and proposals on issues falling within the ambit of the new Conference or involving both Governments, and determined efforts will be made to

resolve any differences between the two Governments. The Conference will be the principal instrument for an intensification of the cooperation and partnership between both Governments, with particular reference to the principles contained in the Joint Declaration, in this Framework Document and in the new Agreement, on a wide range of issues concerned with Northern Ireland and with the relations between the two parts of the island of Ireland. It will facilitate the promotion of lasting peace, stability, justice and reconciliation among the people of the island of Ireland and maintenance of effective security co operation between the two Governments.

43. Both Governments believe that there should also be provision in the Agreement for developing co operation between the two Governments and both islands on a range of "East West" issues and bilateral matters of mutual interest not covered by other specific arrangements, either through the Anglo Irish Intergovernmental Council, the Conference or otherwise.

44. Both Governments accept that issues of law and order in Northern Ireland are closely intertwined with the issues of political consensus. For so long as these matters are not devolved, it will be for the Governments to consider ways in which a climate of peace, new institutions and the growth of political agreement may offer new possibilities and opportunities for enhancing community identification with policing in Northern Ireland, while maintaining the most effective possible deployment of the resources of each Government in their common determination to combat crime and prevent any possible recourse to the use or threat of violence for political ends, from any source whatsoever.

45. The Governments envisage that matters for which responsibility is transferred to new political institutions in Northern Ireland will be excluded from consideration in the Conference, except to the extent that the continuing responsibilities of the Secretary of State for Northern Ireland are relevant, or that cross border aspects of transferred issues are not otherwise provided for, or in the circumstances described in the following paragraph.

46. The Intergovernmental Conference will be a forum for the two Governments jointly to keep under review the workings of the Agreement and to promote, support and underwrite the fair and, effective operation of all its provisions and the new arrangements established under it. Where either Government considers that any institution, established as part of the overall accommodation, is not properly functioning within the Agreement or that a breach of the Agreement has otherwise occurred, the Conference shall consider the matter on the basis of a shared commitment to arrive at a common position or, where

that is not possible, to agree a procedure to resolve the difference between them. If the two Governments conclude that a breach has occurred in any of the above circumstances, either Government may make proposals for remedy and adequate measures to redress the situation shall be taken. However, each Government will be responsible for the implementation of such measures of redress within its own jurisdiction. There would be no derogation from the sovereignty of either Government; each will retain responsibility for the decisions and administration of government within its own jurisdiction.

47. In the event that devolved institutions in Northern Ireland ceased to operate, and direct rule from Westminster was reintroduced, the British Government agree that other arrangements would be made to implement the commitment to promote co operation at all levels between the people, North and South, representing both traditions in Ireland, as agreed by the two Governments in the Joint Declaration, and to ensure that the co operation that had been developed through the North/South body be maintained.

48. Both Governments envisage that representatives of agreed political institutions in Northern Ireland may be formally associated with the work of the Conference, in a manner and to an extent to be agreed by both Governments after consultation with them. This might involve giving them advance notice of what is to be discussed in the Conference, enabling them to express views to either Government and inviting them to participate in various aspects of the work of the Conference. Other more structured arrangements could be devised by agreement.

49. The Conference will also be a framework for consultation and co-ordination between both Governments and the new North/South institutions, where the wider role of the two Governments is particularly relevant to the work of those institutions, for example in a co-ordinated approach on EU issues. It would be for consideration by both Governments, in consultation with the relevant parties in the North, or with the institutions after they have been established, whether to achieve this through formal or ad hoc arrangements.

Protection of Rights

50. There is a large body of support, transcending the political divide for the comprehensive protection and guarantee of fundamental human rights. Acknowledging this, both Governments envisage that the arrangements set out in this Framework Document will be complemented and underpinned by an explicit undertaking in the Agreement on the Part of each Government, equally, to ensure in its jurisdiction in

the island of Ireland, in accordance with its constitutional arrangements, the systematic and effective protection of common specified civil, political, social and cultural rights. They will discuss and seek agreement with the relevant political parties in Northern Ireland as to what rights should be so specified and how they might best be further protected, having regard to each Government's overall responsibilities including its international obligations. Each Government will introduce appropriate legislation in its jurisdiction to give effect to any such measure of agreement.

51. In addition, both Governments would encourage democratic representatives from both jurisdictions in Ireland to adopt a Charter or Covenant, which might reflect and endorse agreed measures for the protection of the fundamental rights of everyone living in Ireland. It could also pledge a commitment to mutual respect and to the civil rights and religious liberties of both communities, including:

- the right of free political thought,
- the right to freedom and expression of religion,
- the right to pursue democratically national and political aspirations,
- the right to seek constitutional change by peaceful and legitimate means,
- the right to live wherever one chooses without hindrance,
- the right to equal opportunity in all social and economic activity, regardless of class, creed, gender or colour.

52. This Charter or Covenant might also contain a commitment to the principle of consent in the relationships between the two traditions in Ireland. It could incorporate also an enduring commitment on behalf of all the people of the island to guarantee and protect the rights, interests, ethos and dignity of the unionist community in any all Ireland framework that might be developed with consent in the future, to at least the same extent as provided for the nationalist community in the context of Northern Ireland under the structures and provisions of the new Agreement.

53. The Covenant might also affirm on behalf of all traditions in Ireland a solemn commitment to the exclusively peaceful resolution of all differences between them including in relation to all issues of self determination, and a solemn repudiation of all recourse to violence between them for any political end or purpose.

Conclusion

54. Both Government's agree that the issues set out in this Framework Document should be examined in the most comprehensive attainable negotiations with democratically mandated political parties in Northern Ireland which abide exclusively by peaceful means and wish to join in dialogue on the way ahead.

55. Both Governments intend that the outcome of these negotiations will be submitted for democratic ratification through referendums, North and South.

56. Both Governments believe that the present climate of peace, which owes much to the imagination, courage and steadfastness of all those who have suffered from violence, offers the best prospect for the Governments and the parties in Northern Ireland to work to secure agreement and consent to a new political accommodation. To accomplish that would be an inestimable prize for all, and especially for people living in Northern Ireland, who have so much to gain from such an accommodation, in which the divisions of the past are laid aside for ever and differences are resolved by exclusively political means. Both Governments believe that a new political dispensation, such as they set out in this Framework Document, achieved through agreement and reconciliation and founded on the principle of consent, would achieve that objective and transform relationships in Northern Ireland in the island of Ireland and between both islands.

57. With agreement, co-operation to the mutual benefit of all living in Ireland could develop without impediment, attaining its full potential for stimulating economic growth and prosperity. New arrangements could return power, authority and responsibility to locally elected representatives in Northern Ireland on a basis acceptable to both sides of the community, enabling them to work together for the common welfare and interests of all the community.

The diversity of identities and allegiances could be regarded by all as a source of mutual enrichment, rather than a threat to either side. The divisive issue of sovereignty might cease to be symbolic of the domination of one community over another. It would instead be for decision under agreed ground rules, fair and balanced towards both aspirations, through a process of democratic persuasion governed by the principle of consent rather than by threat, fear or coercion. In such circumstances the Governments hope that the relationship between the traditions in Northern Ireland could become a positive bond of further understanding, co operation and amity, rather than a source of contention, between the wider British and Irish democracies.

58. Accordingly the British and Irish Governments offer for consideration and strongly commend these proposals, trusting that, with generosity and goodwill, the peoples of these islands will build on them a new and lasting agreement.

