Penn State International Law Review

Volume 20
Number 2 *Penn State International Law Review*

Article 5

1-1-2002

# The Belfast Agreement and the Nation That Always Arrives at Its Destination

Barry Collins

# The Belfast Agreement and the Nation that "Always Arrives at Its Destination"

Barry Collins*

The legal institutions established by the 1998 Belfast Agreement are notable for the success with which they have come to embody legal authority in a society that has been bitterly divided by over thirty years of conflict. This does not mean, however, that the Agreement has come to be regarded as a final settlement of the dispute. Indeed, the way in which the Agreement has appeared to claim authority has been through the establishment of legal and administrative institutions which have the capacity to be accepted by the majority of both Irish nationalists and Ulster unionists, but which do not appear to foreclose the broader "national" question. The general ambit of this article is to investigate "where the nation has gone" in relation to this new administrative discourse that characterises the Belfast Agreement.[1] On the one hand, this new administrative discourse appears to suspend the national question from the legal sphere; on the other, as this article will examine, the "neutral" administrative discourse that has been instituted by the Belfast Agreement only seems to acquire authority insofar as this administrative discourse is seen by the legal subject as in some way "belonging" to them in particular. What this process shows is the way in which the administrative discourse of the Belfast Agreement acquires authority for the subject insofar as it can "stand in" for the nation. Naturally, this raises interesting questions about the relationship between legal discourse and the nation. In particular, it raises questions about how the Belfast Agreement has re-ordered

* Lecturer, School of Law, University of East London, United Kingdom <b.collins@uel.ac.uk> Particular thanks are due to Beverley Brown, Prof. Peter Fitzpatrick, John Strawson and Rosie Bennett for their comments on earlier drafts. An earlier version of this paper was delivered at the Law, Culture and the Humanities Conference 2001 at the University of Texas, Austin.

1. Agreement Reached in Multi-Party Negotiations, Dublin, Belfast, London, 1998 [hereinafter the Belfast Agreement], also known as the Good Friday Agreement.

the way in which the legal subject is ideologically constituted: both as the addressee of "the nation" and through the subject's self-identification in legal discourse.

This article will explore the ideological operation of "the nation" in relation to the Belfast Agreement by drawing on more general debates about the relationship between legal discourse and authority. One mode of describing this relationship that has particular currency in contemporary legal scholarship is to treat the nation in terms of the way in which its invocation (or presupposition) by legal discourse attempts to "ground" legal authority by providing law with a foundational origin. What is revealed in any such "search" for national origins is, of course, that the origin turns out not to exist, and that its presupposition by legal discourse is simply that: a presupposition. While accepting the impossibility of the nation as a foundation for legal authority, this article will also elaborate a methodology that describes the way in which the nation constitutes political and legal identification. This involves a shift from a concern with the nation as an origin that can never be coherently constituted by legal discourse to a concern with the way in which the operation of the nation as a signifier re-orders the subject's identification of itself as the addressee of legal discourse. Drawing on Jacques Lacan's *Seminar on the Purloined Letter*,[2] this article will describe this methodological shift in terms of a shift from seeing the nation as an origin that never "arrives" in legal discourse to an understanding of the nation as a letter that "always arrives at its destination."

## I. Legal Discourse and the Problem of Legal Authority.

First, however, it is necessary to rehearse the familiar juridical and logical paradox that is ubiquitous not only in positivist accounts of the social contract, but which much contemporary legal theory presents as being constitutive of the legal order. This familiar paradox is nothing less than the problem that in order for the state to declare its authority, it must always already presuppose the pre-existence of that authority.

Derrida, for example, in his analysis of the United States Declaration of Independence, describes this paradox in terms of the ontological status that is given to "the people" as a foundation of legal authority in the United States Declaration of Independence.

2. Jacques Lacan, *Seminar on "The Purloined Letter"* (Jeffrey Mehlman trans.), *in* THE PURLOINED POE, Ch.2 (John Muller, J. & William Richardson, eds., 1988).

Observing the way in which legal discourse seeks to perpetually defer the origin back into the past, he notes, "this people does not exist. They do not exist as an entity, it does not exist, before the declaration, not as such. If it gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of signature. The signature invents the signer . . . the Declaration remains the producer and guarantor of its own signature."[3] "The people," the "founders" of law have to be constituted as the foundation of law retroactively: they must be presupposed to exist in order to "bring the law to the light of day."[4]

Derrida's response to this paradox is to reveal the way in which legal discourse fails to coherently "ground" its own authority through the presupposition of a fictional origin. What is concealed by this "fabulous retroactivity"[5] is the performative force of the declarative act, and consequently, the impossibility of "the people" as a coherent foundation of legal authority.

The way in which legal authority is presupposed by legal discourse is nicely illustrated by an example given (in a different context) by Slavoj Zizek. Drawing on Searle's taxonomy of speech acts, Zizek examines the force of the declaration: "the meeting is now closed." This statement produces a performative effect (it closes the meeting) by the utterance of an otherwise constative statement (it describes a meeting which is already closed). The statement becomes true as a description of things through its own performative force (the statement closes the meeting). The speaker changes the world by "representing it as having been so changed."[6] Although Zizek's and Derrida's broader methodological concerns differ considerably, both accounts illustrate the performativity of legal discourse. This is insofar as they both reveal the "trick" by which legal authority is constituted by legal discourse: legal discourse appears to embody legal authority by describing legal authority as always having already been embodied: as always already there.

A concern with this paradoxical presupposition of legal authority is, of course, not peculiar to these contemporary theorists. Indeed, Hans Kelsen, in his "General Theory of Law," endeavours to transcend this problem of legal authority by relying on the

3. *See* Jacques Derrida, *Declarations of Independence*, 15 NEW POLI. SCI. 7, 10 (1986).

4. *Id.*

5. *Id.*

6. *See* SLAVOJ ZIZEK, FOR THEY KNOW NOT WHAT THEY DO 97 (1992); and JOHN SEARLE, INTENTIONALITY 172 (1979).

concept of the *grundnorm*, a concept which, at various points in his writings, he calls a "hypothesis," a "presupposition" and finally a "fiction."[7] The *grundnorm* operates as the originary principle of a legal system, as a basic norm that allows for laws to be interpreted as valid, and to enable law to be distinguished from non-law. However, the *grundnorm*, which is essential to every act of legal interpretation,[8] cannot escape the paradox that underpins its own authority. As Kelsen says, "the basic norm is not created in a legal procedure by a law-creating organ. It is not—as a positive legal norm is—valid because it is created in a certain way, but it is valid because it is presupposed to be valid."[9] Davies observes that the *grundnorm* is chronologically before the law (it is posited as the "origin" of the legal order), but it can only come into existence through its recognition in the legal system of which it is an origin. In this sense, it is paradoxically both prior to the law and subsequent to it.[10]

In relation to a reading of the Belfast Agreement, an obvious question poses itself: How does the nation fit into this logico-juridical paradox of legal authority? Typically, in much contemporary legal theory, it is subsumed as an instance of the more general problematic; as yet another mechanism by which legal discourse has sought to foreclose this troubling paradox which lies at the heart of legal authority. It fits this mode of critique insofar as constitutional discourse seeks to invoke the nation as an "originary" transcendent principle to guarantee the authority of law.[11] To this extent, the invocation of the nation (like "the people" in Derrida's account) as an origin of legal authority does not avoid the same paradox upon which legal authority is founded. On the

7. *See* MARGARET DAVIES, DELIMITING THE LAW: 'POSTMODERNISM' AND THE POLITICS OF LAW 82 (1996); and HANS KELSEN, GENERAL THEORY OF NORMS 256, n.2 (1991).

8. Margaret Davies, for example, describes the *grundnorm* as the "most legal thing." *See* DAVIES, *supra* note 7, at 81.

9. *See* HANS KELSEN, GENERAL THEORY OF LAW AND STATE 116 (1945).

10. *See* DAVIES, *supra* note 7.

11. *See* PETER FITZPATRICK, MODERNISHM AND THE GROUNDS OF LAW Ch.4 (2001). The nation can also be understood in this instance in terms of what Peter Goodrich might call an "ideational source of law". Goodrich describes this as a principle that seeks to "ground" the legal order by providing it with an "external and absolute justification for legal regulation, discipline and law". Goodrich describes the function of this "ideational" source of law as twofold: to give law its conceptual unity, and to distinguish law from non-legal discourse. Goodrich demonstrates, however, that the ideational source fails to give law its systemic unity because it must appeal to external, non-legal sources for its justification. *See also* PETER GOODRICH, READING THE LAW Ch.1 (1986).

one hand, the constitutional discourse must be the embodiment of the nation: In order to claim legal authority it must invoke the authority of the nation as the entity from which legal authority is derived. On the other hand, the constitution must itself bring the nation into existence by constituting (or embodying) the nation; thereby authorising the nation as a source of law. In short, constitutional discourse must presuppose that the nation already exists in order for the nation to be "produced" as an origin for legal discourse.

The significance of this reading of the nation is particularly evident in relation to post-colonial constitutional settlements, because the invocation of the nation in constitutional discourse allows for the new legal order to be distinguished from what has gone before. The constitutional declaration of nationhood gives the post-colonial order the stamp of authority by re-stating the boundary between the legal and the non-legal by reference to the nation. The post-colonial legal order more often than not claims legal authority as the embodiment of the nation with a legitimacy that the colonial order could never match. This value of this order of critique for post-colonial legal scholars lies in the way in which it reveals the fictional, paradoxical and exclusive character of the unitary nation that is ubiquitously invoked as the foundation of post-colonial legal order. Deconstruction opens up the question of the coherency with which the new state marks out its distinctiveness from the existing colonial order. A deconstructivist methodology reveals the way in which the act of constituting the nation in legal discourse is also an act of excluding those counter-discourses that challenge the nation's unitary character.[12] By revealing the impossibility around which the "new" foundation of law is organised, it becomes possible to explore the way in which post-colonial discourse operates as a mimicry of the colonial legal order, a mimicry in which the social hierarchies and institutional sources of law of the colonial order have largely been kept in place. This sense of the impossibility which constitutes the post-colonial state is nicely articulated by Séamus Deane's description of the post-independence Irish Free State: "the fake nation, with its inflated rhetoric of origin and authenticity, had given way to the fake state, with its deflated rhetoric of bureaucratic dinginess. In the passage from the fantasy of one to the realism of the other, the entity called

12. *See* Roshan De Silva, *An Ontological Approach to Constitutionalism in Sri Lanka: Contingency and the Failure of Exclusion*," *in* LAWS OF THE POSTCOLONIAL 181-203 (Eve Darian-Smith & Peter Fitzpatrick, eds. 1999).

Ireland had failed to appear."[13] Indeed, this failure of the nation to "arrive" neatly summarises the deconstructivist concern with revealing the failure of the nation as a point of origin. As Patrick Hanafin notes, "The Constitution is an attempt to pass from the imagined sense of Irishness to the realised state of Ireland. The writing of the nation cannot found the nation, the nation is, to paraphrase Derrida, always in the future (*avenir*), always to come (*a venir*)."[14] A declaration of independence, or a constitutional document declares itself to be the embodiment of the nation, but only insofar as the nation itself has been retroactively constituted by the act of declaration. It is in this sense that nation is an impossible entity: an entity whose embodiment cannot be produced by constitutional discourse.

However, this focus on the retroactive presupposition of origins in legal discourse also permits another conceptualisation of the way in which the nation is constituted as law's origin, one that I would suggest has not sufficiently been taken up by legal scholarship. That approach is one that accepts that the origins of law (as well as the subject of law) are irredeemably split. This is because the nation is constituted by an attempt to close the gap between the presumption that legal authority should be grounded in legal discourse and the fact that the origin of legal authority must be located outside of law. It is the split between these two that renders the closure of legal discourse impossible, and that makes the boundary between the legal and the extra-legal impossible to sustain. What this article will suggest is that the operation of the nation in relation to legal discourse can also be seen in terms of the way in which the nation makes an impossible and recurring attempt to plug this cognitive gap. In Lacanian terms, this might mean describing the nation in terms of the *objet a*, which is installed for the subject, albeit momentarily, as the thing that closes the "hole" in the chain of signification. This is an approach that places an emphasis on the way in which political subjectivity is constituted by the ideological address of the nation, rather than one which merely reveals the "failure" of legal discourse to secure the systemic coherency of law though the invocation of origins, or one which demonstrates how the nation always fails to "arrive" in legal discourse.

13. *See* SEAMUS DEANE, STRANGE COUNTRY 162 (1997).

14. *See* PATRICK HANAFIN, CONSTITUTING IDENTITY: POLITICAL IDENTITY FORMATION AND THE CONSTITUTION IN POST-INDEPENDENCE IRELAND 24 (2001).

As this article has recounted, critical legal theorists have revealed the impossibility of a legal foundation from which legal authority can be derived as a matter of logical inference. However, in the "revelation" that legal discourse is founded on an impossibility, on a paradoxical fiction of origins, an unwitting methodological presumption is often made. That presumption is that the problem of origins is not just a logical problem of the contradiction involved in the declaration of legal authority, but that the origin that legal discourse has actually invoked is the *wrong one*! The deconstructivist analysis of the relationship between law and the origin merely reveals that each time one tries to locate the origin in relation to a legal text (as I have done above in relation to the Belfast Agreement), it is never there: it cannot signify what it claims to signify; it lacks the content that it needs to have in order to constitute a coherent origin. In this sense, deconstructivism can itself become a means of "framing" the relationship between legal discourse and nation: as a circuit of inauthenticity, as the *non-arrival* of the nation in legal discourse. Ironically, this hysterical loop echoes the naïve frustration of the nationalist who keeps looking for the "true" embodiment of the nation in legal discourse, but is always disappointed to find that it's never as "true" as it seems!

What this article seeks to articulate is a methodology that can be employed in understanding the relationship between the legal discourse of the Belfast Agreement and nation, but which is concerned (in an attempt to break the hysterical loop) with the operation of the fiction of origins rather than with its content or lack thereof. In terms of the Belfast Agreement, it will mean a consideration of the ideological operation of the nation as a signifier in relation to legal discourse, irrespective of what it is that the nation might signify, or, more importantly, fail to signify. To do this, I want to shift methodological emphasis: from the nation as a fictional entity that must always fail to materialise to the nation as a point of identification which only has significance insofar as it materialises for the subject. In short, this shift of emphasis is from the nation that fails to arrive in legal discourse to the nation that *always* arrives at its destination!

## II. The "Missing Origins of the Belfast Agreement"

However, it is first worth exploring some of the particular issues that arise in relation to the question of origins in the Belfast Agreement. In particular, it is never clear in the Belfast Agreement

which origin, or which nation is being claimed as the legitimating authority of the new legal institutions in Northern Ireland. Indeed, it is clear from any cursory examination of the Belfast Agreement that its legal institutions rely for the foundation of their legitimacy on entirely contradictory accounts of national origins. Unlike most constitutional documents (which make a claim to authority by invoking the nation as an origin), the Belfast Agreement appears to do the reverse, as its legitimacy rests on the extent to which it can appear to suspend the question of *which* nation is embodied by its institutions.

One approach to the question of origins might be to suggest that the Belfast Agreement does not embody a new legal order, because power has merely been devolved to Northern Ireland by a Westminster statute[15] which delegates legislative power from Westminster on a range of matters to the Northern Ireland Assembly, in the same way that power might be delegated to, for instance a local authority. The statute contains the provisions which confer power on a range of new legal institutions: an elected Northern Ireland Assembly, an Executive and a number of other legal institutions, most notably, the North/South Ministerial Council, the British-Irish Council, the British-Irish Intergovernmental Conference and the Northern Ireland Human Rights Commission. However, the institutions do not derive their authority entirely from Westminster. The statute merely implements the Belfast Agreement, an agreement which was signed by both the British and Irish governments after multi-party negotiations with all of the major political parties in the Northern Irish conflict. The Belfast Agreement was approved by simultaneous referenda in both Northern Ireland and the Irish Republic. This fact problematises any attempt to locate the legal authority of the Northern Irish legal institutions in "the will of the people," because the question of which "people" one is talking about is never clear. The inclusivist nature of the Agreement means that for Irish nationalists (who do not recognise the legitimacy of Northern Ireland as a political entity), the legal authority of the Belfast Agreement is derived from the will of the people of Ireland as a whole. This has significance for Irish nationalists because it is the first all-Ireland poll since the 1918 general election. An additional source of legal authority of the Northern Ireland institutions, from an Irish nationalist perspective is derived from the amendment that the Irish Republic made by

15. Northern Ireland Act 1998 (UK).

referendum to its 1937 Constitution. This amendment, which was introduced as part of the Belfast Agreement, renounced the Irish constitutional claim over Northern Ireland, bound the state to the provisions of the Belfast Agreement and gave constitutional recognition to the institutions established under the Agreement. By contrast, for Ulster unionists, who do not recognise the legitimacy of a role for the Dublin government in Northern Irish affairs, legal authority for the new institutions is derived entirely from the vote that took place in Northern Ireland alone. If one looks (even in the most positivist terms) for the origin of legal authority of the new Northern Irish legal institutions, one will be faced with the simple answer: the location of the origin of legal authority in the Belfast Agreement depends entirely on the position from which one seeks to locate it.

The same difficulty is encountered in attempts to locate the origins of the new legal institutions in any appeal to national identity that might be made by the new legal institutions of Northern Ireland. As the new Northern Ireland institutions have no written constitution, one must search the foundational documents of the institutions (the Belfast Agreement, the Northern Ireland Act, etc.) for any appeal that they might make to any particular myth of national origins. What one finds is that these documents are remarkably prosaic, concerned primarily with the establishment of administrative institutions, and scrupulously avoiding any statement that could appear to give the institutions the status of embodying one nation rather than another. The Belfast Agreement, for example, eschews the language of nationhood, and speaks instead of a "commitment to partnership, equality and mutual respect as the basis of relationships within Northern Ireland, between North and South and between these Islands."[16] Indeed, the only place in any of the foundational legal documents of the new Northern Ireland legal institutions where the idea of the nation is re-stated is in the nineteenth amendment to the 1937 Constitution of Ireland, which was inserted in 1998 under the auspices of the Belfast Agreement). This amendment defines the nation in the most inclusive of terms, describing national identity not in cultural or indeed mythical terms, but (almost echoing the language of consumer rights) as an "entitlement" of "every person born in the island of Ireland."[17]

16. Belfast Agreement, *supra* note 1, § 1.2 (Declaration of support).

17. *See* Arts. 2 and 3, Constitution of Ireland, 1937. The nineteenth amendment amended Articles 2 and 3 of the Irish Constitution. The amended

Indeed, what is notable about the Belfast Agreement is the sense in which the "national question," the question of exactly *which* nation the legal institutions are meant to embody is repeatedly deferred by the legal text (although unlike other constitutional texts, it does not defer the appeal to origins into the past). In pragmatic terms, of course, this is the condition of the whole agreement; that both nationalists and unionists should partially give up on the demand to have their national claims realised. In exchange for this partial loss, the Belfast Agreement offers legal institutions that can (in theory, at least) function without their "national" status being resolved. That is to say that Irish nationalists can see the institutions as having an all-Ireland dimension, while Ulster unionists can see them as guaranteeing a unionist veto over a future United Ireland. In the place of grand constitutional declarations about nationhood, the Belfast Agreement has substituted the bureaucratic detail of administrative discourse: a range of administrative institutions to "fill in" the absence of a narrative of national origins. Where the Belfast Agreement does address the question of national identity, it does so by attempting to nullify its disruptive, or indeed foundational force. The agreement recognises, for example that legal sovereignty is not co-extensive with nationality by recognising the "birthright of all the people in Northern Ireland to identify themselves as Irish, or British, or both."[18] The pledge of office for Assembly members, for example, contains no oath of allegiance, but is couched in terms of a commitment to non-violence, non-discrimination and bureaucratic responsibility.[19] In this sense, the Belfast Agreement can be seen as

---

articles read as follows: Art 2: "It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage." Art 3: "It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island. Until then, the laws enacted by the Parliament established by this Constitution shall have the like area and extent of application as the laws enacted by the Parliament that existed immediately before the coming into operation of this Constitution."

18. Belfast Agreement, *supra* note 1, § 2.1(vi) (Constitutional Issues).

19. *Id.* § 3, Annex A (Draft Clauses/Schedules for Incorporation in British Legislation). The full pledge reads:

> (a) to discharge in good faith all the duties of office; (b) commitment to non-violence and exclusively peaceful and democratic means; (c) to serve

an attempt to substitute administrative detail for the "grand" language of nationhood, what one could describe as the language of the long game." However, it should be noted that during the multi-party negotiations that produced the Belfast Agreement, a great deal of the public debate on the Belfast Agreement was organised not so much around the administrative details of the Agreement, but, by contrast, around questions of the "long game:" the question of whether the Belfast Agreement was the first step towards a United Ireland or whether it was a surrender by the IRA to an acceptance of the partition of Ireland.[20]

However, there are many traces of "long game" discourse to be found in the Belfast Agreement. that address, albeit in a tangential way, the relation between legal authority and the "national question." In the section of the Agreement that deals with "Constitutional Issues" the Agreement recognises the "legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland."[21] From an Irish nationalist point of view, this invocation of the will of the people is highly problematic, because it carries within it a recognition of the legal validity of Northern Ireland. However, this clause is tempered by the subsequent one, which recognises "that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and

---

all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination; (d) to participate with colleagues in the preparation of a programme for government; (e) to operate within the framework of that programme when agreed within the Executive Committee and endorsed by the Assembly; (f) to support, and to act in accordance with, all decisions of the Executive Committee and Assembly; (g) to comply with the Ministerial Code of Conduct.

*Id.*

20. *See* CAIN, *Conflict Archive on the Internet: CAIN Web Service*, *at* http://cain.ulst.ac.uk/ (last visited Feb. 21, 2002).

21. Belfast Agreement, *supra* note 1, § 2.1(i) (Constitutional Issues). Both this section and §.2.1(ii) also appear in Article 1 of the Agreement between the Government of Great Britain and Northern Ireland and the Government of Ireland Establishing a British—Irish Intergovernmental Conference (1998). They are also given effect by the Northern Ireland Act 1998, § 1 (UK).

consent of a majority of the people of Northern Ireland."[22] This declaration has the effect of partly nullifying the invocation of popular will in the previous subsection by recognising the right of the Irish people to abolish the legal institutions of the Belfast Agreement, as long as this is done with the consent of the majority in Northern Ireland. This aspect of the Agreement, often referred to as the "principle of consent," is given particular emphasis by pro-Agreement unionist political discourse insofar as it appears to guarantee the status quo of Northern Ireland as a pat of the United Kingdom. This, however, does not negate one of the extraordinary features of the Belfast Agreement: that it expressly envisages the conditions of its own abolition as a legal authority. The Belfast Agreement provides, for example that the Secretary of State for Northern Ireland must order the holding of a poll to decide the constitutional status of Northern Ireland "if at any time it appears to him likely that a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland."[23] In the section of the Belfast Agreement that deals with human rights, one of the rights specifically guaranteed is the "right to pursue democratically national and political aspirations" and the "right to seek constitutional change by peaceful and legitimate means."[24]

Taken together, these provisions, as well as the recognition of the right to "pursue national aspirations" go well beyond the self-limitation that one normally finds in constitutional documents. Instead, they give the impression of a declaration of legal authority that carries within it a sense of its own temporary nature, a sense that the "national question can be deferred," but perhaps not indefinitely. This is also reflected in the recognition that the will of the majority in Northern Ireland to remain part of the United Kingdom is not a timeless, transcendental entity, but merely "the *present* wish of [the] majority."[25] It could be argued that unlike the eternal temporality in which most constitutional declarations of legal authority are framed, the discourse of the Belfast Agreement

22. *Id.* § 2.1(ii) (Constitutional Issues).

23. *Id.* § 2, annex A, schedule 1, s.2 (Draft Clauses/Schedules for Incorporation into British Legislation).

24. *Id.* § 6.1 (Rights, Safeguards and Equality of Opportunity).

25. *Id.* § 2.1(iii) (Constitutional Issues). A fuller text of this section reads:

> . . . while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union . . . .

*Id.*

operates as though it were a transitional document, establishing a transitional legal authority. This transitional aspect of the institutions of the Belfast Agreement is a feature that makes the Belfast Agreement particularly attractive to Irish nationalists. The Belfast Agreement ensures that future changes to the sovereignty of Northern Ireland, such as membership of a united Ireland are not foreclosed by its legal institutions, subject to the principle of (unionist) consent. The open potential of the Belfast Agreement is also reflected in institutions such as the North/South Ministerial Council, the British Irish Council and the British Irish Intergovernmental Conference, all of which are established by the agreement. From an Irish nationalist perspective, the attraction of these bodies is their potential for development into all-Ireland administrative structures. The North/South Ministerial Council, for example, provides for regular meetings between ministers of the Northern Ireland executive and the Irish government to co-ordinate policies "in areas where there is a mutual and cross-border benefit."[26] In this context, the Belfast Agreement lays down twelve subject areas for ministerial co-operation.[27] However, it is significant that ministerial co-operation is not limited to these issues, as the Agreement merely states that the areas for North-South Agreement *may* include these subject areas, thus allowing for future areas of co-operation to be developed. The scope of the British-Irish Intergovernmental Conference is also loosely defined. The Belfast Agreement provides for regular meetings between the British and Irish governments both at a ministerial and at summit (Prime Ministerial/*Taoiseach*) level to address issues that have not been devolved to the Northern Ireland Assembly. As well as addressing questions of security, the Conference is to address issues of security, rights, justice, prisons and policing ". . . unless and until responsibility is devolved to a Northern Ireland administration." Again in this clause, the potential for constitutional change is left open. While accepting that the Conference has no power to "override the democratic arrangements set up by agreement," the Belfast Agreement envisages a role for the conference in contributing to "any review of the overall political agreement."

In the suspension of the question of national origins by the Belfast Agreement, one can see the relevance of Richard Kearney's

26. Belfast Agreement, *supra* note 1, § 2.5(ii) (Constitutional Issues).

27. These subject areas are: agriculture, education, transport, waterways, social security, tourism, relevant EU programmes, inland fisheries, aquaculture, health, and urban and rural development. *See id.* § 4, Annex (North/South Ministerial Council).

influential post-nationalist thesis. This thesis argues for the re-narration of the nation in legal texts, which would "(i) separate the notion of nation from that of state (ii) acknowledge the co-existence of different identities in the same society and (iii) extend models of identification beyond unitary sovereignty to include more inclusive or pluralist forms of association—such as a British—Irish Council or a Europe of the regions."[28] Undoubtedly, the legal institutions of the Belfast Agreement make no claim to be a final resolution of the Irish conflict; they contain no declaration of a "new" constitutional order, and no direct claim to embody any particular national "destiny." Instead it is the transitional nature of these legal institutions that have made them acceptable as a legal order to nationalists, while it is the guarantee of the principle of consent that has made them acceptable (although considerably less so) to unionists. On the other hand, unionists who participate in the institutions of the Agreement[29] demonstrate that they can accept the transitional potential of the Agreement, as long as it remains unclear to everybody involved as to what kind of political entity the Agreement might be a transition towards!

On the face of it, the Belfast Agreement might seem like the epitome of a post-nationalist (if not post-modern) constitutionalism, in which the problem of origins and the question of the relation between state and nation have been neatly sidestepped. In this process, it appears as if a diffuse legal identity based on notions of civic political commitment has replaced the idea of a legal identity based on the nation-state, and on identification with exclusionary myths of national origin. However, this article will argue that this is not entirely the case, and that the nation has not entirely disappeared as an origin of legal discourse. Instead, this article will suggest that the new "civic" legal identity produced by the Belfast Agreement must still rely on an identification of legal institutions as being infused with the nation as the "origin" of legal discourse, albeit an origin that is installed retrospectively by the legal subject's identification of itself as the addressee of the nation through legal discourse. This will involve an alternative way of reading the relation between legal discourse and the nation, one that pays particular attention to the way in which subjectivity is re-ordered by the address of the nation in legal discourse.

---

28. *See* RICHARD KEARNEY, POSTNATIONALIST IRELAND 24 (1997).

29. I would include here the participation of the Democratic Unionist Party, which strongly rejects the Belfast Agreement in principle, but nonetheless participates in many of its institutions, including the executive.

This approach is by no means an attempt to restore any notion of authenticity to the attempt by legal discourse to embody the authority of the nation, nor is it an attempt to deny the performative force of legal discourse. Instead, this project seeks to begin to examine the ways in which the nation "always arrives" through the subject's self-identification where one least expects it: in the most prosaic legal institutions of the Belfast Agreement; administrative legislation; instruments governing the scope of cross-border bodies; joint ministerial committees, etc. These are aspects of legal discourse that the critical scholar might be tempted to overlook as administrative debris, not least because they are unlikely to directly invoke images of national origins, because they do not take the form of declaring themselves to embody a founding moment of legal authority. By contrast, the nineteenth amendment to Irish constitution is more likely to attract the attention of the critical theorist, not least because this is a legal development which directly addresses itself to "grand constitutional" discourse, to the question of national identity.[30] However, I would argue that the transitional administrative arrangements of the Belfast Agreement also deserve critical attention, for it is in these sublimely prosaic institutions that the nation "arrives at its destination."

## III. Why the Letter "Always Arrives at Its Destination"

The alternative approach to the relationship between the legal discourse of the Belfast Agreement and the nation that will be suggested by this article is inspired by Lacan's famous and enigmatic declaration that "a letter always arrives at its destination!" In particular, it will be suggested that Lacan's discussion of the functioning of the signifier in his *Seminar on the Purloined Letter*[31] offers a helpful analogy for the operation of the nation in relation to legal discourse.

In order to elaborate this methodology, however, it is first necessary to take a detour into some of the debates around Edgar Allan Poe's curious short story, *the Purloined Letter.*[32] The plot of *the Purloined Letter* is organised around a series of thefts. The first theft occurs when the Queen is disturbed in her *boudoir* by a surprise visit from the King and his minister. The Queen has been reading a letter, which she does not wish the King to see; for fear

30. *See* DECLAN KIBERD, IRISH CLASSICS Ch. 35 (2000).
31. Lacan, *supra* note 2.
32. *See* Edgar Allan Poe, *The Purloined Letter*, *in* THE PURLOINED POE Ch. 1 (John Muller, J. & William Richardson, eds., 1988).

that the letter would compromise her. She does not have time to hide the letter, and in her haste, she leaves it sitting openly on the table, in the hope that its open display will render it immune from suspicion. The king, as she had hoped, does not notice the letter. The minister, however, notices the Queen's lack of composure, and he notices the letter on the table. Carefully, he substitutes for the letter a facsimile. The Queen is unable to intervene, for fear of alerting the King, while the King remains blind to the entire exchange. What is interesting about the minister's position here is that he has been enabled to act because he has had the particular ability to see not only the compromising letter, but also to see the limitations of those who might seek to impede the theft. However, this minister, whose all-seeing, hawk-eye glance had enabled him to steal the letter, does not immediately make use of the power that he believes the letter to have given him. Its power, after all, lies in its potential, and the value of the letter will be lost as soon as its contents become known. The minister himself in turn comes to delude himself that his possession of the letter is secure, displaying the coveted letter openly in a letter rack. This time it is the minister who occupies the position that had previously been occupied by the Queen, by deluding himself that the letter, so openly displayed, is in such an obvious place that it could not arouse suspicion. At first, his instinct seems to be proven correct, as the police, who search the minister's home to find the letter, fail to see it. This time, it is the police who see nothing, and in this sense they occupy a position that had previously been occupied by the King. The Queen, frustrated by the ineptitude of the police, hires a detective, Dupin, to steal back the letter. This second thief (Dupin) by a thorough identification with the first thief (the minister) now comes to possess the hawk-eye glance of the thief. He sees through the minister's conceit, identifies the hiding place of the letter and steals it. However, Dupin cannot resist the temptation to take revenge on the minister for a previous slight. He substitutes for the stolen letter a facsimile, upon which he inscribes a couplet in his distinctive script, from which his identity can be clearly identified.

While this strange story opens up a myriad of interpretative possibilities, we will concentrate on the way in which the letter "arrives" for each character. What this means is an examination of the way in which the various characters identify a position for themselves in relation to the movement of the letter. It is important to note that the contents of the letter are never known. What determines the action of the story is the way in which the characters become positioned in relation to the letter; how the

characters identify themselves in relation to the letter. The Queen, for example, identifies herself as being in a compromising position as a result of her possession of the letter. Her subsequent lack of composure, allied to her conceit that the openly displayed letter will not be noticed by the minister, causes her to lose the letter. The minister in turn deludes himself that he is made invulnerable by his possession of the letter, and as a result leaves the letter openly displayed in the letter rack. Again it is his self-identification (his identification with an image of himself) that causes him to lose the letter. Finally, Dupin cannot resist the identification of himself as the mastermind who has stolen the letter, and he identifies himself to the minister by leaving his trace, his distinctive handwriting behind. Dupin in this process also reveals that he is not simply the mastermind detective he believes himself to be, but that the purity of his actions is stained by his narcissism and desire for revenge. Perhaps in this moment, it is the reader who takes possession of the letter from Dupin. Perhaps in this moment, it is for the reader that the letter "arrives," insofar as the reader takes up the position of the interpreter of the tale; a position from which the reader (as the Minister and Dupin had done previously) identifies something of himself/herself in relation to the stolen letter.

Lacan, in his *Seminar on the Purloined Letter*, draws particular attention to the way in which it is the trajectory of the letter itself, rather than the contents of the letter or the characteristics of the characters that re-orders the lives of the characters. Lacan says that in his seminar he is illustrating ". . . the truth which may be drawn from that moment of Freud's thought under study—namely, that it is the symbolic order which is constitutive for the subject—by demonstrating in a story the decisive orientation which the subject receives from the trajectory of the signifier."[33] The importance of the letter in the story, then, is the way in which it describes the operation of the signifier. As Barbara Johnson observes, "the letter [in Poe's story] does not function as a unit of meaning (*a signified*), but as that which produces certain effects (*a signifier*). . ."[34] Most importantly, those effects are produced, both within the story and on the reader of the story without anybody having to know what the contents of the letter actually signify. When Lacan, at the end of his *Seminar*, declares that a "letter always arrives at its destination," he is concerned with describing the way in which the

33. Lacan, *supra* note 2, at 29.

34. *See* Barbara Johnson, *The Frame of Reference: Poe, Lacan, Derrida, in* THE PURLOINED POE 217 (John Muller, J. & William Richardson, eds., 1988).

subject is constituted by the order of meaning; the way in which the signifier only has significance (i.e., functions as a signifier) for the subject who encounters something of itself as the signifier's addressee. To view the nation in these terms will be (as we will later discuss) to view the nation in terms of its operation as a signifier; in terms of its "function" in political and legal discourse, in terms of its "effects," irrespective of any content it might have, and irrespective of anything that might be signified by its operation. This will mean seeing the nation in terms of the way in which the subject is constituted by its address, and in terms of the nation's trajectory in legal and political discourse.

However, Derrida's riposte to Lacan, in an essay entitled *The Purveyor of Truth* must first be mentioned here. Derrida retorts with the question: surely, at least sometimes, must the letter not also *fail* to arrive?[35] By posing this question, Derrida seeks to subvert the possibility of what appears to be Lacan's attempt to "occupy a position of analytical mastery."[36] He accuses Lacan of assuming that there "is a single proper itinerary for the letter which returns to a determinable place"[37] Furthermore, Derrida suspects that what determines this singular trajectory is the truth that Lacan seeks to ascribe to the content-less letter. That truth is the letter's lack of content, lack itself: "The truth of the purloined letter is the truth; its meaning is meaning, its law is the law, the contract of truth itself with logos . . . the truth of Being as non-being. The truth is woman as veiled/unveiled castration."[38] This "truth" (of lack) gives the letter its place, its destination and its unity as a signifier: "The singular *unity* of the letter is the site of the contract with truth itself. This is why the letter comes back to, *amounts to* woman."[39] In Derrida's account, Lacan's view of the trajectory of the signifier is one that can allow the truth of signifier (as a signifier of lack) to be teleologically interpreted by psychoanalysis. He regards Lacan's declaration that a letter always arrives at its destination as an affirmation that psychoanalysis can give us a standpoint from which it becomes possible to determine the "arrival of the letter."

Derrida lays two other accusations before Lacan, both of which concern Lacan's reductive "use" of *The Purloined Letter* as an exemplar of the operation of the signifier. The first prong of this

35. *See* Jacques Derrida, *The Purveyor of Truth, in* THE PURLOINED POE Ch. 2 (John Muller, J. & William Richardson, eds., 1988).

36. Johnson, *supra* note 34, at 214.

37. Derrida, *supra* note 35, at 182.

38. *Id.* at 183.

39. *Id.*

accusation concerns the multiplicity of meanings inherent in the signifier itself. He considers that Lacan has failed to take account of the divisibility of the signifier within the text, within the "complex structure of the scene of writing."[40] Derrida is here describing the threat of the dissemination of the signifier to disrupt the circuit that brings the signifier "to its destination." As Derrida observes, "not that the letter never arrives at its destination, but that it belongs to the structure of the letter to be capable, always, of not arriving . . . dissemination threatens the law of the signifier and of castration as the contract of truth."[41] Derrida's second accusation is that Lacan has "framed" the arrival of the letter by a selective reading of *The Purloined Letter*, by omitting, for example, any discussion of the other stories in the trilogy of which *The Purloined Letter* forms a part. His choice of the word "frame" is significant here, as it has connotations not only of the visual frame, which determines what the viewer of the picture can and cannot see,[42] but it also has connotations of a legal set-up; where the wrong person is "framed" for the crime.

Barbara Johnson, in her reading of *The Purveyor of Truth* addresses a number of Derrida's criticisms. Cannily, she observes that Derrida is guilty of the same crime as Lacan, by his selection of the passages in the *Seminar on the Purloined Letter* that best fit with his account of Lacan's "doctrine of the truth."[43] Just as Lacan has framed Poe, she suggests that Derrida has also "filled in the blanks" in Lacan's *Seminar on the Purloined Letter* by framing the seminar as an affirmation of the truth of psychoanalytical theory; as a method for deciphering the text; as a means of returning to the signifier the possibility of meaning as truth. But the "truth" that Derrida finds in the *Seminar on the Purloined Letter* is "the truth of veiled/unveiled castration, and of the transcendental identity of the phallus as the lack that makes the system work."[44] In fact, Lacan never mentions castration in his seminar.[45] Johnson notes (with perhaps a hint of irony) Derrida's dismissal of Lacan's "style" as "mere ornament, which was such that it would hinder or delay . . . access to a unique content or a single unequivocal meaning

40. *Id.* at 179.
41. *Id.* at 187.
42. *See* JACQUES DERRIDA, THE TRUTH IN PAINTING (Geoff Bennington trans. 1978).
43. Derrida, *supra* note 35, at 192.
44. Johnson, *supra* note 34, at 225.
45. *See id.* at 218.

determinable beyond the writing itself."[46] These observations lead Johnson to suggest that what Derrida is arguing against in *The Purveyor of Truth* is not necessarily the text of the *Purloined Letter*, but "Lacan's power," "the appearance of mastery"[47] that Lacan seems to claim by "deciphering" the trajectory of the letter.

However, the "truth" of the *Purloined Letter*, which Derrida has identified as the "truth" of a psychoanalytical method that teleologically delivers the unequivocal meaning of the signifier to the analyst, is in fact its opposite. As Zizek notes, the *Seminar on the Purloined Letter* itself "lays bare the mechanism of teleological illusion."[48] Whereas Derrida has read the destination of the letter as an empirical place, which has been predestined by the act of the sender; for Lacan the destination is the place of the subject, wherever it is, the place of the reader who "discovers" himself/herself to be the letter's addressee.[49] Lacan's declaration reveals the way in which the subject retrospectively gives content to the signifier: i.e. "when I am confronted with the arbitrary nature of the letter, I automatically make the assumption: the letter can only have a particular content because it must have been pre-destined for me alone."

Indeed, the enigmatic final words of the *Seminar on the Purloined Letter* bear this out: "the sender . . . receives from the receiver his own message in reverse form. Thus it is that what the "purloined letter," nay, the "letter in sufferance" means is that a letter always arrives at its destination."[50] This reversal of "sender" and "receiver" illustrates that there is no "objective" position from which the content of the letter can be deciphered.[51] Perhaps this reversal can be understood in terms of the "return of the repressed," a return which only "has" meaning for its addressee, but which is never the meaning that we expect it to be. It is not that these two positions (of sender and receiver) are symmetrical, but on the contrary, the reversal of the letter indicates that the "sender" of the letter (insofar as the letter can be said to have a sender) is the big Other: the order of meaning: exteriority itself. Zizek gives an

46. *Id.* at 219.
47. *Id.* at 227.
48. *See* ZIZEK, *supra* note 6, at 10.
49. *See* Johnson, *supra* note 34. Johnson says that the "letter's destination is . . . wherever it is read: the place it assigns to the reader as his own partiality." *Id.* at 248
50. Lacan, *supra* note 2, at 53.
51. *See* Johnson, *supra* note 34. Johnson uses this example to illustrate the "discovery" that is made in psychoanalysis: "that the analyst is involved through transference in the very 'object' of his analysis." *Id.* at 247.

example in this context of the letter which is sent without an addressee (the message in a bottle that is dropped into the sea after a shipwreck) as the clearest illustration of the "letter which always arrives at its destination": This because it is delivery of the letter into the field of the Other; the very act of sending the letter that constitutes its destination.[52]

## IV. How the Nation "Always Arrives!"

The use of the "purloined letter" as an analogy for operation of the nation has a number of consequences that now need to be explored. The first is that the nation, if it is to be conceived of as a signifier, cannot be understood in terms of any putative content the nation might have (or, indeed, might fail to have). Instead, it requires that the nation be understood in terms of the way in which its movement from one discursive position to the next re-orders political subjectivity. One might generally describe, for example, the way in which the Belfast Agreement has the effect of moving (purloining) the dominant conception of the nation from aspirational constitutional discourse (which makes a direct appeal to national origins) to the "neutral" discourse of legal administration, from which the question of national origins appears to have been suspended. Furthermore, if we are to avoid a conception of the nation that presupposes that the nation has a signified, or has "content," then we must examine the way in which the nation operates as a point of political identification in relation to legal discourse. In particular, we need to describe the ideological operation of the nation in terms of the letter, which only becomes a letter when I discover that it has been addressed to me; a letter that always "arrives" at its destination, because its destination, to quote Zizek, "is wherever it arrives!"[53]

It is in this context that the administrative institutions established by the Belfast Agreement become particularly interesting, because it is in relation to the subject's identification of itself as the addressee of these institutions that the nation (often

52. *See* ZIZEK, *supra* note 6. Zizek observes:

> its true addressee is not the empirical other which may receive it or not, but the big Other, the symbolic order itself, which receives it the moment the letter is put into circulation, i.e., the moment the sender 'externalises' his message, delivers it to the Other, the moment the Other takes cognisance of the letter and thus disburdens the sender of responsibility for it.

*Id.* at 10.

53. *Id.* at 10.

unexpectedly) "arrives." In particular, it is worth exploring the way in which these "neutral" institutions become invested with "national" significance for the subject. These institutions have to play a double role. On the one hand, they have to be sufficiently "neutral" to ensure that both Irish nationalists and Ulster unionists can sustain a public commitment to a citizenship based on abstract rights and duties. On the other hand, the institutions of the agreement must also have sufficient appeal for both nationalist and unionist aspirations to enable each of the communities to regard the institutions as particularly "theirs." On one level, it is the absence of the nation as a point of origins that guarantees the effectiveness of the Belfast Agreement. Alternatively, what gives the Belfast Agreement its political currency is the extent to which it allows contradictory national claims to be invoked *indirectly* in a legal form; the extent to which the Agreement can be seen by nationalists and unionists to "belong to" each of them separately and to the exclusion of each other. In this sense, the nation has not been excised from political life, because it is the nation that makes the "civic" legal identity envisaged by the Belfast Agreement "stick." It is in this identification of the Belfast Agreement as belonging to "us" and not to "them" that the nation (which ever nation it is) "arrives at its destination."[54]

The way in which the letter's destination is not an empirical location, but "whoever is possessed by it"[55] illustrates the way in which the signifier orders the position of the subject independent of any content it is supposed to signify. For Zizek, this is also a description of the "the logic by which one (mis)recognises oneself as the addressee of ideological interpellation."[56] By this, Zizek is describing the way in which ideological discourse "arrives at its destination" in the subject by constructing the subject as its addressee: It's not that I can "objectively" recognise myself as the

54. It is interesting to note here the way in which the nation operates as a "floating signifier." This concept, derived from the Lacan's notion of the *point de caption* describes the way in which certain signifiers can be understood as key points in the discursive framework, which have the effect of partially and temporarily fixing the meaning of the signifying chain (although these points themselves also shift within that chain of signification). The nation can be seen to operate as a floating signifier to the extent that it can be seen as integral to both the discourse of national origins *and* the discourse of administration. *See* JACQUES LACAN, ECRITS, A SELECTION (1993). *See also* BRUCE FINK, THE LACANIAN SUBJECT 14-24 (1995); and ERNESTO LACLAU & CHANTAL MOUFFE, HEGEMONY AND SOCIALIST STRATEGY 111-14 (1985).

55. Johnson, *supra* note 34, at 248.

56. *See* ZIZEK, *supra* note 6, at 10.

addressee of ideological discourse; I can't, because the ideological discourse is what produces me its addressee. In this way, the contingency of ideological identification becomes transformed into the outcome of fate: the letter, the nation, etc., must have been destined for me: why else would I identify with it? This identification, the lifeblood of political discourse, conceals its own performativity: it conceals the way in which I presuppose that I must have been the addressee of ideological discourse as soon as I find something of myself in it.[57]

This "trick" of ideology also describes the way in which the Belfast Agreement has effectively re-ordered the intersubjective network. The "trick" of the Belfast Agreement is that it is though its "neutral" legal institutions that the subject is constituted as the addressee of the nation! The subject can see itself as the addressee of "neutral" legal discourse, but it is the indirect address of the nation that makes the legal discourse of the Belfast agreement "stick." Here is the paradox of the post-nationalist thesis: That in order for the post-nationalist "civic" legal order to re-order political identification, it must appeal to us, the legal subjects, as if it is "our" legal order; it must "speak" to us as subjects. In the context of the Belfast Agreement, this post-nationalist legal identity becomes "ours" to the extent that it has been "grounded" or authorised for the subject as the embodiment of the nation. In this identification, the nation is retroactively installed, or presupposed as law's origin. What is concealed in the identification of this legal discourse as "speaking to us" in particular is the performative force of this presupposition of origins. Instead, it appears "natural" or "fateful" that the legal discourse of the Belfast Agreement should "belong to" us. After all, why else would we have identified with it?

However, what this identification of legal discourse as "our law" cannot see is that the particular nation that has "pre-destined" law to become recognised as "ours" has no content in itself. This is to say that the "fateful" (mis)recognition by the subject of itself as the addressee of legal discourse can be understood as a position to be occupied by the subject; a position which is produced by the trajectory of the nation as a signifier in relation to political discourse. This (mis)recognition echoes the way in which the characters in *The Purloined* Letter "automatically perceive their

57. *See id.* Zizek says "[this] is the reason why a letter always reaches its addressee: because one becomes its addressee when one is reached. The Derridean reproach that a letter can also miss its addressee is simply beside the point: it makes sense only insofar as I presuppose that I can be its addressee." *Id.* at 12.

fate as something that pertains to the letter as such,"[58] as if the effects produced by its repeated theft are due to some mysterious quality of the letter itself, rather than to the intersubjective network in which the letter operates. Understanding the ideological operation of the Belfast Agreement is not so much a question of which nation it is that the Agreement embodies (or fails to embody), but of how the "arrival" of the nation for the legal subject is what retroactively constitutes the legal authority of the Belfast Agreement.

## V. How the Nation "Returns" in Legal Discourse

An interesting case study of political identification under the aegis of the Belfast Agreement can be made of the dispute about which flag should fly over the new legal institutions of Northern Ireland, a detail of the new administration that was curiously omitted from the Belfast Agreement. However, this dispute over symbols had demonstrated a capacity on a number of occasions to considerably undermine the Assembly and other legal institutions. This matter has considerable historical resonance particularly due to the inflammatory effect of the infamous Stormont-era legislation which had made it an offence to display the Irish tricolour in public; an act whose implementation had been associated with some of the earliest violence of the current troubles.[59] In October 2000, after the Northern Ireland Assembly had failed to reach agreement on the issue, a cross-community *ad hoc* committee on flags was convened by the Assembly to resolve the matter.[60] When this committee also failed to reach agreement, the Northern Ireland Secretary, Peter Mandelson, intervened, issuing an order decreeing that on seventeen designated days, the majority of which are associated with the royal family, the Union flag alone was to be flown over ministerial buildings in Northern Ireland.[61] Nationalist parties objected to this order, not only because the Secretary of State had supervened the institutions of the Belfast Agreement, but because his action had interfered with the principle of "Parity of

58. *Id.* at 16.

59. The Flags and Emblems Act 1954 (NI) (repealed 1987) made it an offence to interfere with the union flag and to display "any provocative item" including the Irish tricolour. *See* TIM PAT COOGAN, THE TROUBLES 47-49 (1995) (for a discussion of the police violence and rioting that was associated with attempts to enforce this legislation in 1964).

60. Ad Hoc Committee on Flags (NI) Order 2000.

61. The Flags (2000 Order) (Commencement) Order (Northern Ireland) 2000 (UK).

Esteem" that is laid down as one of the guiding principles of the Belfast Agreement.[62] They argued that under the principle of parity of esteem, either a combination of the union flag and the tricolour should be flown, or else no flag at all. All unionist parties, by contrast, argued in favour of the order, on the grounds that "the constitutional status of Northern Ireland is unambiguously stated [in the Belfast Agreement] as being 'in its entirety' a part of the United Kingdom. The flying of the Union flag from government buildings is the clear expression of that constitutional position."[63] In October 2001, a nationalist party (Sinn Féin) lost a high court challenge to the order by the Secretary of State for Northern Ireland.

Bryson and McCartney have argued that the dispute over flags betrays a significant difference between nationalist and unionist attitudes to national flags, suggesting that for Irish nationalists the flag is primarily an expression of Irish identity, whereas for Ulster unionists it is a symbol of political loyalty to the United Kingdom.[64] Robin Wilson however, suggests that the unionist position does not recognise the political changes that have been produced by the Belfast Agreement. In particular, he argues that the devolved institutions are concerned with citizenship rather than subjecthood, and that the choice of flag should reflect "civic rather than ethnic concerns." His proposal, which echoes Kearney's post-nationalist thesis, is that a new neutral flag should be designed to fly over official buildings (along with the flag of the EU), while both the tricolour and the union flag could be flown as a supplement to represent "no more than two of the contexts in which Northern Ireland as a region finds itself."[65]

This dispute is interesting as a return of the "national question" in the context of the institutions of the Belfast Agreement. The dispute erupts as a seemingly irresoluble point of

62. Belfast Agreement, *supra* note 1, § 2.1(v) (Constitutional Issues).

63. Submission by the Ulster Unionist Party (UUP) to the Ad Hoc Committee to consider the draft Regulations laid by the Secretary of State under the Flags (Northern Ireland) Order 2000.

64. *See* LUCY BRYSON & CLEM MCCARTNEY, CLASHING SYMBOLS: A REPORT ON THE USE OF FLAGS, ANTHEMS AND OTHER NATIONAL SYMBOLS IN NORTHERN IRELAND (1994); and Henry Patterson, *Party versus Order: Ulster Unionism and the Flags and Emblems Act*, 13 CONTEMP. BRIT. HIST. 4 (1999).

65. ROBIN WILSON, FLAGGING CONCERN: THE CONTROVERSY OVER FLAGS AND EMBLEMS (2000). Wilson notes that the adoption by the Northern Ireland Assembly of the flax-plant, symbol of the linen industry, as an uncontroversial logo has been relatively successful (although he wryly questions the wisdom of associating the Assembly with the symbolism of a slowly dying textiles industry).

departure between unionist and nationalist positions. The corollary of Robin Wilson's observations is that the dispute about flags is an instance of both unionists and nationalists attempting to "claim" the institutions of the Belfast Agreement; to symbolically foreclose the question of sovereignty that the Agreement has left open; to retrospectively install the origin! However, what is interesting for our purposes is that the "national" dispute erupts for and within legal institutions: the Assembly, the *Ad Hoc* Committee and the Courts. Significantly, it is a dispute that is structured in legal and institutional terms, which implicitly assume the legitimacy of the legal institutions of the Agreement. While the dispute appears to be an example of the failure of the "civic" legal identity espoused in the Belfast Agreement, in fact it can be seen as the opposite: it is an example of the (excessive) success with which the "civic" or "neutral" administrative discourse of the Agreement has become invested with national identification. It is surely in such political struggle for the definition of the administrative institutions of the Agreement that the nation "arrives." Indeed, one could further argue that this identification by both unionists and nationalists with the institutions of the Agreement with the nation is on the contrary an instance of the "healthy" operation of civic institutions and is indicative of the extent to which the Belfast Agreement has reconfigured national identification. The profundity of such a shift in political identification should not be understated, particularly in a context where legal institutions were rejected until recently by many nationalists merely as institutions of colonial domination.[66]

However, the way in which the "emptiness" of the legal discourse of the Belfast Agreement becomes "filled" with national identification in this matter can also be seen in terms of the closing words of Lacan's *Seminar on the Purloined Letter*: "the sender . . . receives from the receiver his own message in reverse form . . . ."[67] The message that the subject receives "in reverse form" from its self-identification in the "neutral" legal discourse of the Belfast Agreement is that very thing that the neutral legal discourse has appeared to repress: the impossible and exclusionary demand for

66. By contrast, the decision of the Secretary of State for Northern Ireland to exercise his own executive powers to decide the matter indicates a troubling lack of investment in the institutions of the Agreement. This is particularly because his actions threatened to foreclose the question of origins in the Belfast Agreement: the open question of the nation to which the legal institutions "belong." Additionally, the externality of the Secretary of State's position to the symbolic economy of the Agreement is revealed by his action, and in this sense, his sovereign position is revealed.

67. Lacan, *supra* note 2, at 53.

the actualization of the nation! What has been repressed from the "neutral" administrative discourse of the Belfast Agreement is the nation as a source of legal origins. By the same token, it is the nation that "returns" in its true, inverted form in the subject's identification with "neutral" legal discourse. What "returns" in the dispute over flags is the demand to foreclose the question of national origins, the very thing that will render impossible the "neutral" administrative discourse of the Belfast Agreement. To paraphrase Zizek, the administrative discourse of the Belfast Agreement corresponds to the "superego's 'malevolent neutrality'; [it] is nothing but a neutral 'purveyor of truth' but giving us only what we wanted, but including in the package part of what we wanted to ignore."

This "return of the repressed" (by which the "letter arrives at its destination") can be seen in the way in which the "neutral" administrative discourse of the Belfast Agreement becomes its opposite as soon as it is invested with national identification. In the political discourse of pro-Agreement unionism, for example, the "neutral" institutions of the Belfast Agreement are often presented as institutions that will finally remove from the political scene the threat of nationalist "subversion" of unionist rule. This view would suggest that in exchange for the consultative role that the Dublin government is given in the Agreement, Catholics will eventually accept the inevitable destiny of Northern Ireland as part of the United Kingdom and republicans will surrender their weapons. The Agreement thus becomes justified in pro-Agreement unionist political discourse as a means of "tricking" nationalists accepting a unionist veto on constitutional change and of humiliating supporters of the IRA. What is interesting is the way in which the "neutral" administrative discourse of the Belfast Agreement becomes incorporated into unionist thinking as its opposite: as a means of guaranteeing the exclusion of Catholics from political power.[68] In pro-Agreement Irish nationalist discourse, a similar logic is at play. Pro-Agreement nationalists often point to two "inevitabilities" that will result from the Agreement: the inevitable blurring of the North-South border that will be brought about by the institutions of the Belfast Agreement (particularly the North-South Ministerial Council, the British-Irish Council and the British-Irish Intergovernmental Conference) along with the inevitable demographic change that will bring about a Catholic majority in

68. *See generally* PROTESTANT PERCEPTIONS OF THE PEACE PROCESS IN NORTHERN IRELAND (Dominic Muray ed., 2000).

Northern Ireland. These "inevitabilities" allows the Belfast Agreement to be incorporated into nationalist discourse as a stage of the "inevitable" unification of the country.[69] Again, the "neutral" and "transitional" discourse of administration becomes its opposite: it becomes part of an exclusionary demographic discourse by which the eventual "true" political embodiment of the Irish nation appears guaranteed.

## VI. Conclusion

In this article, the nation has been treated in terms of its ideological operation, in terms of its functioning as a signifier, rather than in terms of content. This has meant examining the way in which the subject is constituted by the ideological address of the nation in the way that the subject identifies something of himself or herself in legal discourse; the way in which the subject embodies legal discourse with the authority of the nation; the moment when the subject sees legal discourse as something that "must have been destined for him or her!" Just as the minister in *The Purloined Letter* comes to occupy the position previously occupied by the queen in a way that appears inevitable or predestined, this self-identification by the legal subject is also a profoundly "fateful" moment. It is a moment in which the identification of legal discourse as having been "meant for us alone" has the appearance of inevitability, as an instance of what Zizek describes as a "symbolic debt that has to be repaid."[70] In terms of the operation of the nation as an origin that is retrospectively installed in legal discourse, this takes the form of identifying with the "neutral" administrative discourse of the Belfast Agreement as the embodiment of its opposite; the nation as a foundation of authority.

What this article has sought to do is to accept the impossibility of "locating" the nation as the origin in legal discourse, but also to go beyond merely revealing the impossibility of national origins. This suggests that the nation does more than merely fail to be embodied as an origin for legal discourse. Instead, the emphasis in this paper is on identification, on the way in which the movement of the nation from one discursive position to another re-orders political identification. This perspective allows for a re-conceptualization of the way in which the nation operates as a signifier,

69. *See* Peter Shirlow & Paul Stewart, *Northern Ireland Between Peace and War*, 69 CAPITAL & CLASS. IV (Autumn, 1999). *See generally*, FIONNUALA O'CONNOR, IN SEARCH OF A STATE, CATHOLICS IN NORTHERN IRELAND (1993).

70. ZIZEK, *supra* note 6, at 16.

irrespective of what it may signify or fail to signify. It allows for an analysis of the ideological operation of the nation in relation to legal discourse in terms of the way in which the cognitive gap in legal discourse becomes "filled" by the nation: in terms of the way in which the nation becomes retroactively installed for the subject as an authorization of legal discourse. In the context of the Belfast Agreement, it denies the possibility of the Agreement instituting a "pure" administrative discourse from which the nation as an origin has been suspended, because it is in this administrative discourse itself that the subject encounters something of itself as the addressee of the nation: it is in the subject's self-identification in "neutral" administrative discourse of the Belfast agreement that the nation always "arrives" at its destination.