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Irish Unification as Northern Ireland Self-Determination: A Speculative Reappraisal of the Evidence

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IRISH UNIFICATION AS NORTHERN IRELAND SELF-DETERMINATION: A SPECULATIVE REAPPRAISAL OF THE EVIDENCE

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I. INTRODUCTION

The November 15, 1985, Republic of Ireland-United Kingdom accord,¹ recognizing the Republic's formal consultative role in governing British-ruled Northern Ireland, was widely applauded. The

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1. *Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland*, 24 I.L.M. 1582 (1985) [hereinafter *Agreement*].

eyes of the world again were drawn to avowedly pro-popular rule measures undertaken within Northern Ireland. This article will discuss Northern Ireland in terms of majority rule self-determination and democratic principles, regardless of whether they follow juridical international law principles.

The pre-World War I demography of Northern Ireland — the island's six northeastern counties — will be reviewed briefly in light of the 1918 General Election, which indirectly resulted in severing Northern Ireland from a newly independent, twenty-six county State of Ireland. The Northern Ireland border is now a carefully calculated gerrymander. The application of democratic principles to gerrymandering is examined to clarify the Northern Ireland border's political validity insofar as it might be defended in the name of majority rule self-determination.

The constantly approaching, but never arriving, Roman Catholic absolute majority in Northern Ireland will be investigated. A Catholic majority is continually diverted because of the disproportionate Catholic emigration from Northern Ireland. Selective emigration pressures will be appraised in light of the religiously disparate impact of Northern Ireland's unemployment. The dubious democratic validity of deliberate political manipulation of Ireland's demography merely to sustain the purported majority endorsement of an incumbent regime will become apparent.

The discussions concerning gerrymandering and the political manipulation of demography will suggest that perpetuation of a Northern Ireland divided from today's Republic of Ireland might be challenged democratically in the name of majority rule self-determination. This assessment of the Northern Ireland border against a democratic standard remains vital in 1987 because most Northern Ireland Catholics have never acknowledged the legitimacy of Northern Ireland. Some have continuously sought to destroy Northern Ireland by political and military means, according to Conor Cruise O'Brien, a noted foe of the Irish Republican Army (IRA).² The oversimplified equation herein of Protestant with Unionist and of Catholic with nationalist is useful, although not conclusive, be-

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[M]ore than a third of the population of the Protestant State are Catholics, and most of these have never acknowledged the legitimacy of a State in which they were included against their will. Of this alienated fraction a very small but dangerous minority — in the form of the Irish Republican Army — has always sought to bring down the State through combined political and military action. This small minority has always enjoyed widespread, if nervous, sympathy among the Catholic population of Northern Ireland.

cause in Northern Ireland a close correlation between political affiliation and religion exists.³

An assessment of the Northern Ireland border against a democratic standard is appropriate and timely especially in light of the 1979 and 1980 litigation before the European Commission of Human Rights, the 1982 Anglo-Argentinian Falkland Islands War, and the evolving interpretation of American constitutional law presented by the United States Supreme Court during 1986. These developments helped cast light upon the democratic logic of majority rule self-determination. Both Irish nationalists and British Prime Minister Margaret Thatcher have made explicit, public appeals to the logic of Northern Ireland's "self-determination" and "democracy."

II. THE GERRYMANDER ISSUE

A. *The 1918 General Election*

In 1911, Ireland's six northeastern counties of Antrim, Down, Armagh, Derry, Tyrone, and Fermanagh included 820,370 Protestants and 430,161 Catholics.⁴ Yet in the nine-county province of Ulster encompassing these six,⁵ the Protestant majority was far smaller: 890,880 Protestant versus 690,816 Catholics.⁶ The Catholic majority was dominant in the counties of Donegal, Cavan and Monaghan.⁷ The Protestant minority therein varied from 18.5 percent to 25.3 percent.⁸ In Fermanagh and Tyrone, the Protestant minorities comprised only 43.8 percent and 44.6 percent of the populace, respectively.⁹

3. "While not every Protestant was a Unionist or every Catholic a nationalist, there was and is a very close correlation between religious and political affiliation in Northern Ireland." J. CURRAN, *THE BIRTH OF THE IRISH FREE STATE 1921-1923*, at 296 n.6 (1980).

4. *Id.* "[A] six-counties Northern Ireland with a 66 per cent Protestant majority, 820,370 non-Catholics to 430,161 Catholics, would be safe for Protestantism and Unionism." P. BUCKLAND, *A HISTORY OF NORTHERN IRELAND* 20 (1981).

5.

In the 16th century Ulster was divided into shires, nine in all, but one of these was Cavan, which till then was regarded as part of Connaught. Under James I thousands of new settlers were introduced into Ulster from England and Scotland. Their descendants prospered and the "Ulster problem" became a live issue in Irish politics. In 1920 the six counties of Antrim, Down, Armagh, Londonderry, Tyrone, and Fermanagh were grouped together into the new state called northern Ireland. The three Ulster counties of Monaghan, Cavan, and Donegal form the province of Ulster in the Republic of Ireland.

22 *ENCYCLOPEDIA BRITANICA* 478 (1973).

6. J. CURRAN, *supra* note 3, at 296 n.6.

7. *Id.* at 7.

8. P. BUCKLAND, *ULSTER UNIONISM AND THE ORIGINS OF NORTHERN IRELAND 1886-1922*, at 93 (1973).

9. *Id.* "Protestants outnumbered Catholics by substantial margins in Antrim, Down,

On November 25, 1918, the British Parliament was dissolved.¹⁰ For the first time in English history, elections were scheduled for the same day; polling day was to be December 14, 1918.¹¹ The campaign for the General Election opened during the final week of November.¹²

The Manifesto of the Standing Committee of Sinn Fein as passed by the Dublin Castle Censor provided in the first half:

The coming General Election is fraught with vital possibilities for the future of our nation. Ireland is faced with the question whether this generation wills it that she is to march out into the full sunlight of freedom, or is to remain in the shadow of XXX imperialism

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Sinn Fein aims at securing the establishment of that Republic.

1. By withdrawing the Irish Representation from the British Parliament and by denying the right XXXXXX of the British Government XXXXXXXXXXXXXXXXXXXXXXX to legislate for Ireland.

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3. By the establishment of a constituent assembly comprising persons chosen by Irish constituencies as the supreme national authority to speak and act in the name of the Irish people, and to develop Ireland's social, political and industrial life, for the welfare of the whole people of Ireland.

4. By appealing to the Peace Conference for the establishment of Ireland as an Independent Nation. At that conference the future of the nations of the world will be settled on the principle of government by consent of the governed. Ireland's claim to the application of that principle in her favour is not based on any accidental situation arising from the war. It is older than many if not all of the present belligerents

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Armagh, and Londonderry; their stronghold was the city of Belfast, 75 percent of whose inhabitants were Protestants." J. CURRAN, *supra* note 3, at 7.

10. D. MACARDLE, *THE IRISH REPUBLIC* 262 (1965).

11. G. DANGERFIELD, *THE DAMNABLE QUESTION: A STUDY IN ANGLO-IRISH RELATIONS* 300 (1976).

12. D. MACARDLE, *supra* note 10, at 262.

Sinn Fein stands XXXXXXXXXXXXXXXX for the Nation; it represents the old tradition of nationhood XXXXXX XX reasserting the inalienable right of the Irish Nation to sovereign independence reaffirming the determination of the Irish people to achieve it, and guaranteeing within the Independent Nation equal rights and equal opportunities to all its citizens. Believing that the time has arrived when Ireland's voice for the principle of untrammelled XXXXXXXXXXXXXXXX self-determination should be heard above every interest of party or class, Sinn Fein will oppose at the Polls every individual candidate who does not accept this principle.¹³

The drafting of this election manifesto had been a matter of profound deliberation.¹⁴ Even as passed by the Dublin Castle Censor,¹⁵ it was plain what position the voters for Sinn Fein endorsed.

The Unionist vote in eight Ulster constituencies fell short of the combined vote of Sinn Fein and the parliamentary United Irish League (UIL) Nationalists.¹⁶ An equal pre-election division of candidacies therein allocated to Sinn Fein the constituencies of Derry City, East Down, Northwest Tyrone, and South Fermanagh, and to the Nationalists, the constituencies of South Down, Northeast Tyrone, East Donegal and South Armagh.¹⁷ The fledgling Irish Labour Party decided not to contest the election.¹⁸ Although the Party was displeased with Sinn Fein's social outlook, it chose to allow a clear popular expression on national self-determination.¹⁹

Sinn Fein worked under some extraordinarily adverse conditions. The authorities censored Sinn Fein manifestos and arrested its director of elections.²⁰ All republican papers had been suppressed and every Irish newspaper was under censorship.²¹ Furthermore, the British controlled the entire election machinery and the Post Office.²² Forty-eight Sinn Fein candidates were jailed.²³ Both the military and the police watched the December 14th polling booths.²⁴

13. *Id.* app. I, at 921 (The Xs indicate the censored portions).

14. *Id.* at 263.

15. *Id.* "This election manifesto was mutilated by the British censor, about one-fourth of its contents being deleted." *Id.*

16. *Id.* at 264. See also M. FARRELL, NORTHERN IRELAND: THE ORANGE STATE 21 (1976).

17. D. MACARDLE, *supra* note 10, at 264-65.

18. J. CURRAN, *supra* note 3, at 20.

19. *Id.*

20. *Id.*

21. D. MACARDLE, *supra* note 10, at 262.

22. *Id.*

23. G. DANGERFIELD, *supra* note 11, at 300-01.

24. D. MACARDLE, *supra* note 10, at 265.

On the other hand, the polling clerks were almost exclusively Sinn Fein.²⁵ The lenient conditions of the Sinn Fein leadership's internment allowed them to direct Sinn Fein even post-arrest.²⁶ Women had secured the franchise, although not on terms of sexual equality.²⁷ Women over thirty were now eligible to vote, creating an infusion of strength for Sinn Fein.²⁸ The government so mismanaged the military vote that few Irish soldiers away from their units received postal voting papers.²⁹ In all probability they would have opposed Sinn Fein as pro-German.³⁰

B. 1918 Irish Self-Determination

Electoral results were announced on December 28, 1918.³¹ Of 105 candidates returned for Ireland, seventy-three were Sinn Feiners and twenty-six were Unionists.³² The Nationalists retained six seats,³³ four of which resulted from a prior agreement requiring Sinn Fein to withdraw from those constituencies.³⁴ Sinn Fein, with forty-seven percent of ballots cast,³⁵ won a seventy percent majority of the seats.³⁶ The Irish total was 1,526,910 votes; the Unionists commanded only 315,394 — about twenty percent.³⁷

The measure of a people's will hinges upon the standard utilized. Sinn Fein captured forty-seven percent of the popular vote with seventy-three percent of voters participating and twenty-seven percent abstaining.³⁸ Sinn Fein's victory was as substantial as that of the coalition in Britain, which resulted in a two-thirds majority in the House of Commons with only 47.6 percent of the popular vote.³⁹ However,

25. W. PHILLIPS, *THE REVOLUTION IN IRELAND 1906-1923*, at 152 (1963).

26. *Id.*

27. D. MACARDLE, *supra* note 10, at 262.

28. *Id.*

29. G. DANGERFIELD, *supra* note 11, at 300.

30. *Id.*

31. *Id.* See also D. MACARDLE, *supra* note 10, at 266.

32. See G. DANGERFIELD, *supra* note 11, at 300; D. MACARDLE, *supra* note 10, at 266; W. PHILLIPS, *supra* note 25, at 153.

33. See J. CURRAN, *supra* note 3, at 21; G. DANGERFIELD, *supra* note 11, at 300; D. MACARDLE, *supra* note 10, at 266.

34. See J. CURRAN, *supra* note 3, at 21; M. FARRELL, *supra* note 16, at 21.

35. J. CURRAN, *supra* note 3, at 21. "In the contested constituencies, slightly more than 1 million out of 1.5 million voters cast ballots. Sinn Fein got 484,000 of these votes, the Unionists 297,000, and the Home Rulers 233,000." *Id.* at 297 n.32.

36. D. MACARDLE, *supra* note 10, at 266.

37. *Id.*

38. G. DANGERFIELD, *supra* note 11, at 300-01. This percentage of voters was about average for Irish elections. *Id.*

39. J. CURRAN, *supra* note 3, at 21.

forty-one percent of the electorate failed to vote in this election.⁴⁰ The British electorate had never awarded any English party as large a majority in Great Britain as the Irish people had given Sinn Fein.⁴¹

In nine-county Ulster, the Unionists won a popular majority in a minority of the counties;⁴² Antrim, Derry, Down, and Armagh.⁴³ Not only were the Unionists a minority in Tyrone and Fermanagh, but in the remaining counties of Donegal, Cavan, and Monaghan no Unionist at all was returned.⁴⁴ The Unionists took only 265,111 votes in Ulster to a combined Nationalist total of 177,557.⁴⁵ In the six northeastern counties of Antrim, Armagh, Derry, Down, Fermanagh, and Tyrone, their local majority was 255,819 to 116,888.⁴⁶ Consequently, the nationalist minority (one-third) in the six northeastern counties far exceeded the Unionist minority (one-fifth) in all of Ireland.⁴⁷ On balance, therefore, the 1918 elections apparently made out a poor case for exclusion of the six counties.⁴⁸

The newly-elected Sinn Fein Members of Parliament (M.P.s) declined to go to Westminster.⁴⁹ Meeting at the Dublin Mansion House on January 7, 1919, Sinn Fein representatives not incarcerated arranged to convene the *Dail Eireann* (Assembly of Ireland).⁵⁰ All Irish M.P.s were invited to attend but UIL members and Unionists refused.⁵¹ The inaugural meeting of the *Dail Eireann* at the Mansion House was on January 21, 1919, with the members adopting a Declaration of Independence.⁵²

The IRA, more or less under authority of the *Dail Eireann*, opened a guerilla campaign against Britain.⁵³ From January 1919 until July 1921 Ireland was at war, which the *Dail* officially endorsed in

40. *Id.*

41. D. MACARDLE, *supra* note 10, at 267. For readings of the 1918 General Election unfavorable to Sinn Fein, see IRISH UNIONISM 1885-1923, at 53, 56-57 (P. Buckland ed. 1973) (citing generally J. WILSON, SELF-DETERMINATION (1921); P. WILSON, THE IRISH CASE 31-33 (1920)).

42. G. DANGERFIELD, *supra* note 11, at 301.

43. D. MACARDLE, *supra* note 10, at 266.

44. *Id.*

45. M. FARRELL, *supra* note 16, at 21.

46. *Id.*

47. G. DANGERFIELD, *supra* note 11, at 301.

48. *Id.*

49. M. FARRELL, *supra* note 16, at 22.

50. G. DANGERFIELD, *supra* note 11, at 301.

51. M. FARRELL, *supra* note 16, at 22.

52. *Id.*

53. C. O'BRIEN, *supra* note 2, at 101. "The IRA, in continuous existence since 1916, is now the world's oldest underground army. Even more telling is the fact that it is the last in an almost unbroken succession of revolutionary organizations going back to Wolfe Tone's United Irishmen." P. STEVENS, GOD SAVE IRELAND!: THE IRISH CONFLICT IN THE TWENTIETH CENTURY 194 (1974).

March 1921.⁵⁴ Failing to crush the guerillas, Britain split Ulster.⁵⁵ The Government of Ireland Act of 1920 established a Northern Ireland Parliament for the six northeastern counties of Antrim, Armagh, Down, Fermanagh, Londonderry, and Tyrone. The Unionists ultimately preferred these counties.⁵⁶

On June 22, 1921, King George V opened the inaugural session of the Northern Ireland Parliament in Belfast by appealing for peace.⁵⁷ On July 9th a truce was agreed to, and on December 6, 1921, a treaty was signed in London.⁵⁸ The twenty-six southern and western counties became a Commonwealth in 1922 and a Republic in 1948.⁵⁹ British Prime Minister David Lloyd George encouraged the hope that a Boundary Commission, created under this Anglo-Irish Treaty of 1921, would transfer to these independent counties at least the extensive Catholic areas included in Northern Ireland.⁶⁰ Michael Collins, a key Irish nationalist leader, believed this transfer would leave the remainder-statelet economically nonviable.⁶¹

C. *The Border as Gerrymander*

Following the 1918 General Election the British and the Irish Unionists had wrestled with the disposition of Ireland. In considering partition, county lines usually became the political boundaries.⁶² As

54. B. CHUBB, *THE GOVERNMENT & POLITICS OF IRELAND* 40 (1970).

55. *Id.*

56. C. O'BRIEN, *supra* note 2, at 101. The Act of Ireland was "passed in the British Parliament in 1920 without one single Irish vote for or against it." O'Flaherty, *Letter to the Editor*, *NAT'L REV.*, May 13, 1977, at 527.

57. B. CHUBB, *supra* note 54, at 41.

58. *Id.*

59. *THE SUNDAY TIMES INSIGHT TEAM*, *ULSTER* 32 (1972).

60. C. O'BRIEN, *supra* note 2, at 101.

61. *Id.*

If they join in, the Six counties will certainly have a generous measure of local autonomy. If they stay out, the decision of the Boundary Commission arranged for in Clause 12, would be certain to deprive "Ulster" of Fermanagh and Tyrone. Shorn of these counties, she would shrink into insignificance. The burdens and financial restrictions of the Partition Act will remain on North-East Ulster if she decides to stay out. No lightening of these burdens or restrictions can be effected by the English Parliament without the consent of Ireland. Thus, union is certain.

M. COLLINS, *THE PATH TO FREEDOM* 93 (1922).

62. P. BUCKLAND, *supra* note 8, at 93. "Gerrymandering" has been defined as:

A reorganization of electoral districts to gain some advantage in a forthcoming election. When Elbridge Gerry was Governor of Massachusetts in 1812, the state legislature divided Essex County into two districts with borders so drawn as to give the maximum advantage to the Republican Party. On a map one of the districts, with pencilled additions, looked like a salamander, and the expression "to gerrymander" was coined. It should be distinguished from the reorganization of electoral districts which is sometimes

early as 1913-1914, then British Prime Minister Asquith had considered partition by county option.⁶³ By 1919 representatives of every political allegiance advocated exclusion of all nine counties of Ulster, a view attractive to Prime Minister George's government.⁶⁴ At the last moment, however, the British government chose to exclude only the six northeastern counties of Ireland.⁶⁵ This probably occurred because an anticipated six-county Parliament of fifty-two members would boast a Unionist majority of about twenty.⁶⁶

Advocates of nine-county Ulster rather farsightedly identified the political unhealthiness of so unbalanced a breakdown. They feared too large a Unionist majority in the northern Parliament as well as too large a nationalist majority in the southern Parliament. Rather, they favored a healthy Unionist minority in the south and nationalist minority in the north, feeling the "proper" northern majority should be effectuated as rapidly as possible.⁶⁷

Six-county Unionists feared the united nine counties of Ulster because Protestants held a fifty-six percent majority.⁶⁸ A nine-county Parliament, including counties Cavan, Donegal, and Monaghan, would rule therein only 70,000 Protestants and Unionists but 260,000 Catholics, Sinn Feiners and Nationalists. Advocates of a six-county Ulster estimated that a united, nine-county Ulster Parliament would yield a Unionist majority of three or four.⁶⁹ Indeed, the growth of the socialist vote in and around Belfast imperiled even this slender Unionist majority, possibly resulting in a Unionist minority of two.⁷⁰

Britain split both Ireland and Ulster along a religion-linked

essential to ensure that every parliamentary representative speaks for approximately the same number of voters, and which is known as redistribution. . . .

F. ELLIOTT, *A DICTIONARY OF POLITICS* 190 (7th ed. 1973).

63. J. CURRAN, *supra* note 3, at 7.

64. P. BUCKLAND, *supra* note 4, at 20.

65. P. BUCKLAND, *supra* note 8, at 117.

66. *Id.*

67. *Id.* at 119.

A majority of 20 in a parliament of 52 is rather large. It would appear unwise that the northern parliament should have too great a unionist majority, just as it is to be deplored that the southern parliament should have (and will have) too great a nationalistic majority, if it should contain any unionists at all. The ideal position would be to have a fairly strong nationalist minority in the north and a fairly strong unionist minority in the south. If this ideal position cannot at present be effected in the south it can and should be in the north.

Id. (quoting *Ulster and Home Rule. No Partition of Ulster* (pamphlet #D627/435 issued Apr. 1920 by the Unionists of Cavan, Donegal and Monaghan, P.R.O.N.I.)).

68. P. BUCKLAND, *supra* note 4, at 20. This majority consisted of 890,880 non-Catholics to 690,819 Catholics. *Id.*

69. P. BUCKLAND, *supra* note 8, at 117.

70. *Id.* See also P. BUCKLAND, *supra* note 4, at 20. Advocates of a nine-county Ulster

boundary line carefully geared to predetermine partisan electoral results. The Unionist leaders privately decided to settle for six counties and abandon the other three Ulster counties which had a massive Catholic majority.⁷¹ The three counties excluded contained not only 70,000 Unionists but, more importantly, 260,000 Sinn Feiners and Nationalists. Charles Craig, a key Irish Unionist leader, feared inclusion of these opponents would reduce the Unionist majority to an untenable level.⁷²

Britain divided Ireland not on Irish option, nor county option, nor province-wide (Ulster-wide) option terms, but along a religion-linked boundary line. One might inquire, therefore, what post-partition, six-county politics looked like. Paul Blanshard reported three decades later that two of the six counties of the North, Fermanagh and Tyrone, were Catholic and nationalist by only a narrow margin. The Catholic-Protestant ratio in these two counties was about fifty-three to forty-seven, and the nationalists had won a majority in every general election since 1920.⁷³

Blanshard questioned whether the post-partition tension in the six counties could be relieved if Fermanagh and Tyrone were ceded to Dublin. He found cession of these two counties would leave unresolved the problem of Londonderry, Northern Ireland's second city, which was predominantly Nationalist though located in a Unionist county. Londonderry is only a few miles from the Republic's County Donegal, to which it spiritually belongs. If the pattern of local allegiance either to Unionism or to Dublin was determinative in dividing

rejected all the arguments against a nine-counties parliament, especially the view that the parties would be too finely balanced. Nine-counties men said that it was absurd to imagine that a province with a Protestant majority of 200,064 should not be able to return a majority of members, and they tried to prove that a nine-counties parliament would contain a unionist majority by reference to past and future election results. On the one hand, though no unionists had been returned for Cavan, Donegal and Monaghan in the 1918 general election, 25 unionists and 15 Sinn Feiners and nationalists had been returned for the whole province (whose parliamentary representation had been increased from thirty-three to forty). On the other hand, under an Ulster parliament of 64 members elected by proportional representation, 38 unionists and 26 nationalists were likely to be returned, including 2 unionists for the three-counties area. This would give unionists a good working majority and at the same time give adequate representation to the Catholic minority.

P. BUCKLAND, *supra* note 8, at 118.

71. M. FARRELL, *supra* note 16, at 22.

72. "The three excluded counties contain some 70,000 Unionists and some 260,000 Sinn Feiners and Nationalists, and the addition of that large bloc of Sinn Feiners and Nationalists would reduce our majority to such a level that no sane man would undertake to carry on a parliament with it." *Id.* at 366-67 n.2 (quoting *Parliament of the United Kingdom, Parliamentary Debates: Official Report*, 127 PARL. DEB. H.C. (5th ser.) 990-01 (Hansard 1920) (statement of Charles Craig)).

73. P. BLANSHARD, *THE IRISH AND CATHOLIC POWER* 218 (1972).

Northern Ireland, the Republic would get not only the counties of Tyrone and Fermanagh but also the City of Londonderry and the sections known as South Armagh and South Down. The Dublin *Irish Catholic* advocated the right of these sections to secede from the Unionist-ruled statelet because of their nationalist majorities. If they did, however, Blanshard realized almost nothing would remain of Northern Ireland except for Belfast and its environs.⁷⁴

As previously noted, in 1921 Michael Collins clearly anticipated Blanshard's 1953 observations. Too few people from the six-county area favored partition along a religion-linked boundary line carefully geared to predetermine partisan electoral results. The six-county partition border endorsed by Charles Craig was and is recognized as a religion-linked, political gerrymander.⁷⁵ If majority rule self-determination remains the justification for Irish partition, then analysts must properly assess the legitimacy of calculated religion-linked political gerrymandering.

D. *Democracy and Gerrymandering*

1. A European Juridical Perspective

One commentator has described the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms as among the greatest achievements of the Council of Europe.⁷⁶ Europeans may now bring before the European Commission of Human Rights (Commission) allegations of human rights violations. By 1980, fourteen of the nineteen contracting states had accepted the optional declaration allowing individuals' petitions.⁷⁷

Protocol One of the Convention provides in Article 3: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."⁷⁸ Article 14 of the Convention provides: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other

74. *Id.* at 218-19.

75. McEvoy, *Letter to the Editor*, CHRISTIAN SCI. MONITOR, Feb. 17, 1982, at 22, col. 2.

76. R. BEDDARD, HUMAN RIGHTS AND EUROPE: A STUDY OF THE MACHINERY OF HUMAN RIGHTS PROTECTION OF THE COUNCIL OF EUROPE 1 (1980) (author is Lecturer in Law at the University of Southampton).

77. *Id.* (21 countries are members of the Council).

78. Protocol One of the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, reprinted in R. BEDDARD, *supra* note 76, at 204.

status.”⁷⁹

The 1979 Commission case, *Kennedy Lindsay et al. v. United Kingdom*,⁸⁰ is instructive as to the democratic legitimacy of religion-linked political gerrymanders carefully geared to predetermine electoral results. In *Kennedy*, the applicants, officers of the British Ulster Dominion Party, protested the United Kingdom’s European Assembly Elections Act of 1978. This enactment specified that the elections of U.K. representatives to the European Assembly must utilize the simple majority system of voting in the U.K. outside the six counties of Northern Ireland. However, within Northern Ireland the elections must utilize the proportional representation system of the single transferable vote.⁸¹ The applicants were dissatisfied with the prospect of proportional representation for “the Irish Republican irredentist community.”⁸²

The Commission determined that Article 3 of the Protocol provides for elections ensuring free expression of the people’s opinion. Proportional representation affords minority views to be adequately represented particularly where, as in Northern Ireland, votes are normally cast along ethnic or religious lines and a clear minority group exists. The Commission found this system more protective of minority rights and, therefore, consistent with the Protocol’s goal of free expression in elections.⁸³

If proportional representation is generally in keeping with democratic politics, what of gerrymanders? Gerrymandering supposes the drawing of some electoral lines unnecessary under proportional representation. In *Liberal Party v. United Kingdom*,⁸⁴ the Commission, in interpreting Article 14 of the Convention, denied that the U.K. Liberal Party had suffered a violation of its rights in the system of U.K. parliamentary elections from simple majority electoral dis-

79. European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 14, reprinted in R. BEDDARD, *supra* note 76, at 189.

80. No. 8364/78, 15 Decisions and Reports 247 (European Comm’n on Human Rights, Mar. 8, 1979).

81. *Id.* at 248.

82. *Id.* at 249.

83. *Id.* at 251. The Commission further stated:

[T]he Commission cannot find that the application of a system more favourable to the minority in this part of the country is not in line with the condition that the people should be able to express its opinion freely. Rather on the contrary, a system taking into account the specific situation as to majority and minority existing in Northern Ireland must be seen as making it easier for the people to express its opinion freely.

Id.

84. No. 8765/79, 21 Decisions and Reports 211 (European Comm’n on Human Rights, Dec. 18, 1980).

tricts.⁸⁵ Yet, it left "open the question whether . . . specific features in the voting behavior could raise an issue under Article 3 of the Protocol, also in conjunction with Article 14, if religious or ethnic groups could never be represented because there was a clear voting pattern along these lines in the majority"⁸⁶

The Northern Ireland border is a gerrymander engineering specific features into voting behavior. An identifiable religious group cannot win because a clear voting pattern along religious lines exists in the intra-six county electoral majority. Article 3 of the Protocol and Article 14 of the Convention may provide assistance in determining whether the Northern Ireland border as gerrymander has afforded democratically legitimate majority rule self-determination. To the extent one-person/one-vote principles illegitimize gerrymanders along religious lines, the Northern Ireland border as calculated gerrymander is illegitimate.

2. An American Juridical Perspective

The gerrymander issue was recently addressed by the United States Supreme Court in *Davis v. Bandemer*.⁸⁷ Once Justice White, joined by Justices Brennan, Marshall and Blackmun, determined that a political gerrymandering claim can be justiciable,⁸⁸ he turned his attention to the question of whether gerrymandering is a provable violation of the fourteenth amendment's guarantee of equal protection of the laws to every person within the jurisdiction of a state.⁸⁹

The precise question was "whether a particular group has been unconstitutionally denied its chance to effectively influence the political process."⁹⁰ The four Justices found the lack of proportional representation insufficient to prove discrimination violative of the fourteenth amendment.⁹¹ Justice White further stated

without specific supporting evidence, a court cannot presume in such a case that those who are elected will disregard the disproportionately underrepresented group. Rather, unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a

85. *Id.* at 213, 225. See also *X v. United Kingdom*, No. 7140/75, 7 Decisions and Reports 95 (European Comm'n on Human Rights, Oct. 8, 1976).

86. No. 8765/79, 21 Decisions and Reports at 225.

87. 54 U.S.L.W. 4898 (U.S. June 24, 1986).

88. *Id.* at 4903.

89. *Id.* See also U.S. CONST. amend. XIV.

90. 54 U.S.L.W. at 4905.

91. *Id.*

voter's or a group of voters' influence on the political process as a whole.⁹²

Justice White's logic is applicable to the British drawing of a 1922-1987 gerrymander borderline across the island map of Ireland. Revolutionary Ireland constituted an island in contest for self-determination purposes. The border arrangement, however, has created an electoral system which "consistently degrade[s] . . . a group of voters' influence on the political process as a whole."⁹³

Nationalist voters ("a group of voters") in Northern Ireland have found their aspirations permanently discounted ("consistently degrade[d]"). The frontier has for four generations denied these voters a voice in the nationalist Dublin government by including inside Northern Ireland such nationalist populations of the nine-county province of Ulster as Londonderry and the counties of Tyrone and Fermanagh.⁹⁴ The border also has denied those four generations their chance to effectively "influence . . . the political process" inside Northern Ireland by excluding therefrom such nationalist populations of Ulster as the counties of Cavan, Donegal and Monaghan.⁹⁵ Under the standard expressed in *Davis*,⁹⁶ the Northern Ireland border is clearly illegitimate.

The gerrymander border climax of the 1918-1922 struggle is particularly relevant to 1987 Irish unification demands, provided the 1923-1987 Northern Ireland demography is approximately as favorable to nationalist unification demands as the 1918-1922 demography. This would suggest the continuing impact of the original gerrymander. It is, therefore, necessary to examine the demography of Northern Ireland.

III. THE POLITICAL MANIPULATION OF DEMOGRAPHY ISSUE

A. *The Perpetually Impending Catholic Majority*

Since 1861 the religious distribution in the Northern Ireland six-counties has been remarkably stable notwithstanding the higher birthrate of the local Catholics.⁹⁷ Even allowing for age, age at marriage, and occupation, the birthrates of the local Catholics are higher

92. *Id.*

93. *See id.*

94. *See supra* text accompanying notes 73-74.

95. *See supra* text accompanying notes 68-69.

96. *See supra* text accompanying note 92.

97. Kane, *Civil Rights in Northern Ireland*, 33 *REV. POL.* 54, 73 (1971).

than those of other denominations.⁹⁸

Paul Blanshard in 1953 found allegations that the Catholic birth-rate in Northern Ireland had been double the Protestant rate in the 1940's.⁹⁹ The North's educational statistics showed that forty-one percent of the primary schoolchildren were Catholic, although the Catholic proportion of the total populace was about thirty-four percent.¹⁰⁰ If this superior nationalist population rate of reproduction continued, Blanshard predicted that within a few decades Northern Ireland would be absorbed into the Republic. In 1987 Mr. Blanshard's 1953 speculation, "a few decades,"¹⁰¹ sounds like now.

By 1972 Northern Ireland's Catholics apparently constituted an absolute majority always impending but never allowed to arrive. The greater Catholic birthrate had been, since the formation of Northern Ireland as a separate statelet, an ever-present subject of Unionist warnings to the Protestant population. The Unionists have utilized this constant fear of being outbred to summon both Protestant employers and workers to exert economic pressure to drive Catholics from the area. The chief function of recurrent sectarian riots and pogroms¹⁰² in Belfast is doubtlessly to expel Catholics whenever the pressure of their numbers increased. The extent of the peril which causes the Protestants' consistent apprehension regarding their ascendancy is indicated by the fact that the number of Catholic children of schoolgoing age is nearly always half that of the total of such children. According to Terence O'Neill, then-Prime Minister of Northern Ireland, in 1969 the proportion of Catholic children was fifty-one percent. Of course, by 1987 this generation of schoolchildren is well into voting age.

Only through the operation of selective pressures, mainly economic, have the Protestants kept relatively stable the percentage of Catholics in the overall populace. The Catholic percentage has shown a tendency to mount slowly: in 1911, 34.4 percent; in 1926, 33.5 percent; in 1937, 33.5 percent; in 1951, 34.4 percent; and in 1961, 34.9 percent.¹⁰³ By 1971 the overall Catholic proportion had slipped to 31.4 percent,¹⁰⁴ yet in mid-1981 the Catholic birthrate remained

98. *Id.* at 74.

99. P. BLANSHARD, *supra* note 73, at 232.

100. *Id.*

101. *Id.*

102. This Yiddish word is defined as "an organized massacre of helpless people. . . ." WEBSTER'S NEW COLLEGIATE DICTIONARY 887 (5th ed. 1977).

103. L. DE PAOR, *DIVIDED ULSTER* 129 (1973).

104. THE ULSTER YEAR BOOK: THE OFFICIAL HANDBOOK OF NORTHERN IRELAND 1977, at 10 (Belfast). On the other hand, the proportion of Northern Irish marriages overall which were Catholic actually increased steadily over the 1961, 1971, 1976, 1977 and 1978 dates from 33.3 per cent (1961) to 40.2 per cent (1978). THE ULSTER YEAR BOOK: THE OFFICIAL HANDBOOK OF

higher than the Protestant.¹⁰⁵

Another analyst reviewed the evidence finding in 1974 the Roman Catholics' fertility rates were considerably higher than for all other groups. Live births by 1000 married women in 1960-1962 were 288 for the former but 163 for the latter group, and the respective averages for family size were 4.69 and 2.88. The fertility differential between the two groups became significant only post-1937, and the effect thereof can be witnessed in the mounting number of Catholic children in primary schools. These percentages were 34.8 percent in 1924, 36.5 percent in 1934, 39.4 percent in 1945, 42.8 percent in 1951, 45.5 percent in 1957, and 51 percent in 1968.¹⁰⁶

In 1982 reports surfaced, only days prior to the outbreak of the Anglo-Argentinian Falkland Islands War, that apparently 1978 was the initial year in which more children had been born to Catholic than to Protestant parents. The Roman Catholic Church recorded 13,286 baptisms in 1978, a year of 26,239 births.¹⁰⁷

Paul Compton, a geography professor at Belfast's Queen's University studying population trends, recounted that by 1982, while the Protestant birthrate was only fourteen per thousand, the Catholic was twenty-one per thousand. The Protestant death rate was virtually equal to its birthrate at thirteen per thousand, whereas the death rate of the progressively younger Catholic populace reached just nine per thousand.¹⁰⁸ Although answers to census questions about religion are voluntary and many persons withhold any response, Compton estimated the Catholic element had attained thirty-eight percent of the six-county population even by 1979.¹⁰⁹

B. *Emigration as Political Weapon*

Blanshard discovered that Northern Ireland Catholics were certainly reproducing faster than Protestants, but apparently not all of them were remaining in Northern Ireland.¹¹⁰ As previously indicated, the Northern Ireland Catholic absolute majority is always imminent

NORTHERN IRELAND 1980, Table 17 (Belfast); THE ULSTER YEAR BOOK: THE OFFICIAL HANDBOOK OF NORTHERN IRELAND 1981, Table 16 (Belfast).

105. Kuehnelt-Leddihn, *The Irish Problem*, NAT'L REV., June 26, 1981, at 728.

106. G. MACEOIN, NORTHERN IRELAND: CAPTIVE OF HISTORY 11 (1974). The percentages through 1957 were gleaned from M. HESLINGA, THE IRISH BORDER AS A CULTURAL DIVIDE 64 (1971). See G. MACEOIN, *supra*, at 302 n.7. The 1968 figure was originally supplied by O'Neill. See *id.* (citing *The Campaign for Social Justice in Northern Ireland*, in THE PLAIN TRUTH 2 (3d ed. 1972)).

107. Borders, *Ulster Seems Headed for a Catholic Majority*, in NORTHERN IRELAND 137, 138 (J. Bartlett ed. 1983) (reprinted in N.Y. Times, Mar. 14, 1982, at 10, col. 1).

108. *Id.* at 138.

109. *Id.*

110. P. BLANSHARD, *supra* note 73, at 232.

but never achieved due in large part to differential emigration.

The total percentage of emigration from Northern Ireland between 1951 and 1961 was 10.1 percent for Roman Catholic males, although only 4.5 percent for males of other denominations. For Roman Catholic females it was 8.8 percent, while for females of other denominations just 3.0 percent. The severe impact of Roman Catholic emigration is more evident in the figures from two important age groups. In the age group twenty to twenty-four, 28.6 percent of Roman Catholic males left, compared to just 9.5 percent of other denominations. In the age group twenty-five to twenty-nine, 31.7 percent of Roman Catholic males departed, but only 19.3 percent of other denominations. Female emigration parallels that of males, although the percentages are somewhat lower. Recall that persons of other denominations outnumber Catholics about two to one, so the Catholic emigration on this basis is quite high.¹¹¹

The importance of Protestant emigration from the twenty-six counties of independent Ireland also cannot be exaggerated. A twenty-four percent Protestant decrease from 1926 to 1946 created a concurrent decline in the total population in independent Ireland when an increase normally would have occurred.¹¹² But this pattern of comparatively heavier Protestant emigration from the south reversed after World War II. Between 1946 and 1961 the Catholic intercensal decline was greater for specific age groups.¹¹³

Moreover, official selective emigration pressures were absent in independent Ireland. As one demographer's study found, the emergence of modern Ireland during the early 1920's, and the Protestant populace's decline by one-third from 1911 to 1926, were not linked in any way to the new government's direct discrimination against Protestants. In the Irish Free State's Constitution of 1922, the state specifically was prohibited from endorsing any one religion; imposing any discrimination or disability because of religious affiliation; or acquiring church property by compulsion, except for certain specified public works and then only with compensation. Protestant schools continued sans interference, and had special transportation facilities. The judiciary retained the more than representative proportion of Protestants. Under the 1937 Constitution, the first President of Ireland was a Protestant, Douglas Hyde.¹¹⁴ The Northern Ireland case is

111. Kane, *supra* note 97, at 74 (citing B. WALSH, RELIGION AND DEMOGRAPHIC BEHAVIOR IN IRELAND 17 (1969)).

112. R. KENNEDY, THE IRISH: EMIGRATION, MARRIAGE AND FERTILITY 110 (1975). Protestant emigration rather than conversion to Catholicism appears the active variable. *Id.* at 111.

113. *Id.* at 116. These age groups are 10-14, 15-19, 20-24, 25-29 and 30-34. *Id.*

114. *Id.* at 128. Protestants in independent Ireland have constituted a privileged minority. K. BOWEN, PROTESTANTS IN A CATHOLIC STATE: IRELAND'S PRIVILEGED MINORITY (1983).

not to be confused with the Ireland-wide state of affairs.

C. *Selective Emigration Pressures*

It is important to determine what causes this differential emigration which precludes arrival of the ever-impending Catholic absolute majority in Northern Ireland. Coincidentally with the 1969 revitalization of the current strife in Northern Ireland, one commentator recorded that the Northern Ireland government in Belfast and various local authorities were perhaps the biggest employers in the region.¹¹⁵ These employers invariably hired Protestants.¹¹⁶ During 1967 out of 106 public service positions paying over £4,000 yearly, only three were held by Catholics.¹¹⁷ Over ninety percent of the six-county Northern Ireland civil servants were Protestant.¹¹⁸ As of 1969, 209 professional and technical grade government employees existed, ranging from cabinet officers to Parliamentary draughtsmen. Only thirteen employees were Catholic.¹¹⁹

The noted Insight Team of *The Sunday Times* discerned the rationale underlying Northern Ireland governmental employment discrimination against Catholics: Catholics were enemies of the state.¹²⁰ If their superior birthrate were not countered by the frank persuasions to emigrate, they would become a majority throughout the province and promptly vote it into the Catholic Republic to the south.¹²¹

As United States Senator Daniel P. Moynihan commented during his earlier incarnation as a professional sociologist:

The Irish resistance to British rule provided, along with the Polish experience in yet more complicated circumstances, a model of sorts for the colonial wars of liberation that have taken up so much of modern history. One could wish that those who [have] followed, or repeated, the model might have gone on to learn from the Irish how to establish a democratic society in the aftermath of colonial rule.

Moynihan, *Foreward*, in A. GREELEY, *THAT MOST DISTRESSFUL NATION* vii, xv (1972). A sociologist might inquire what, if any, potent sociocultural variable is common to Poland and the Republic of Ireland.

Electoral politics remained religion-linked in Northern Ireland but not in independent Ireland due partly to the use of single-member constituencies in the north but proportional representation in the Republic. E. LAKEMAN, *HOW DEMOCRACIES VOTE* 255 (1974). For a prominent study of Irish voting, see generally C. O'LEARY, *IRISH ELECTIONS, 1918-77* (1979).

115. A. BESTIC, *THE IMPORTANCE OF BEING IRISH* 175 (1969).

116. *Id.*

117. D. CONNERY, *THE IRISH* 259 (1968).

118. *Id.*

119. Kane, *supra* note 97, at 60-61 (citing *The Campaign for Social Justice in Northern Ireland*, in *THE PLAIN TRUTH* 5-6 (2d ed. 1969)).

120. *THE SUNDAY TIMES INSIGHT TEAM*, *supra* note 55, at 30.

121. *Id.*

As of 1969 a large number of firms opening factories in Northern Ireland located in predominantly Protestant areas.¹²² Adult male unemployment in Protestant areas was 1.0 percent for Antrim, 3.6 percent for Ballymena, 3.6 percent in Lisburn, and 4.1 percent in Bangor. Corresponding unemployment in Catholic areas was 17.1 percent in Derry, 17.5 percent in Newry, 20.6 percent in Enniskillen, and 24.1 percent in Strabane.¹²³ The 1971 male unemployment rates indicate the continuing disparity between Catholics and Protestants.¹²⁴

There seems no purely economic explanation for these Northern Ireland Protestant/Catholic unemployment differentials. Overall unemployment figures were almost identical for the Northern Ireland six counties and the twenty-six independent Ireland counties. In 1966 the Northern Ireland/Republic of Ireland unemployment percentages were 6.1 percent and 6.6 percent, respectively; in 1971 they were 8.1 percent and 8.0 percent, respectively.¹²⁵

122. A. BESTIC, *supra* note 115, at 175.

123. *Id.* The British government is well aware that its economic manipulation of Northern Ireland disfavors Catholics and reinforces bigotry. Former Prime Minister Harold Wilson's memoirs quote with approval his televised May 1974 speech on Northern Ireland: "On finance, we had provided \$70 million for the Harland and Wolff Shipyard, 'where the employment is almost 100 per cent from a single religious community.' Yet it was Harland workers who more than any had denied their fellow Ulstermen the right to work." H. WILSON, *FINAL TERM: THE LABOUR GOVERNMENT 1974-1976*, at 77 (1979).

"Of over one thousand skilled workers at the Harland and Wolfe Shipyard there is not one skilled Catholic tradesman - a fact that did not stop the British government from recently giving Harland and Wolfe over \$100 million to continue its operations of *both* shipbuilding and discrimination." Lowry, *Keeping Catholics in Their Place*, *COMMONWEAL*, July 16, 1982, at 400, 401 (emphasis in original).

124. The 1971 male unemployment rates are as follows:

<u>District Council</u>	<u>Catholic</u>	<u>Protestant</u>
Castlereagh (East Belfast)	15.3	4.6
Lisburn	8.3	4.3
Newtownabbey	11.3	4.7
Antrim	9.0	3.5
Ballymena	10.1	6.2
Carrickfergus	11.8	6.3
Larne	9.6	4.7
Craigavon	14.3	5.1

O'Dowd, *Regional Policy*, in L. O'DOWD, B. ROLSTON & M. TOMLINSON, *NORTHERN IRELAND* 30, 57 (1980).

125. T. O'HANLON, *THE IRISH* 241 (1975). More recent data demonstrates that the British government's 1976 Fair Employment Act, supposedly enacted to curb anti-Catholic employment discrimination in Northern Ireland, has failed. Lowry, *supra* note 123, at 400-01. Queen's University (Belfast) claims to be a center of excellence, but in 1982-1983 it had but 55 Catholic, full-time, academic staff members, as opposed to 286 Protestant. It also had 7 Catholic professors versus 34 Protestant. *Four to One Imbalance in Queen's Academics*, *FORTNIGHT*, Oct. 1986, at 5.

Official social pressure as well as economic pressures may have helped impel differential emigration. In 1972 Prime Minister O'Neill published a book entitled, *The Autobiography of Terence O'Neill: Prime Minister of Northern Ireland 1963-1969*.¹²⁶ It included a photograph of Prime Minister O'Neill captioned: "The first ever visit of a Northern Ireland Prime Minister to a Catholic school."¹²⁷ Notice the significant irony of the first visit being so recent.

Law enforcement authorities also could invoke pressures other than economic and social in Northern Ireland to ensure that an always impending Catholic absolute majority is permanently forestalled via differential emigration. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."¹²⁸ In the 1972 case of *Government of Ireland v. Government of the United Kingdom*,¹²⁹ the Dublin government, applicant, charged the London government, respondent, with use of torture techniques in Northern Ireland. The record described in detail the British government's interrogation techniques.¹³⁰ The Commission found the purpose of these methods to be isolation of the person "not only from communicating with other persons, but also from himself."¹³¹ The Commission held the British tactics violative of Article 3.¹³² Although it found the United Kingdom had presently ceased these methods, the Commission recognized the very real possibility of their re-introduction. In fact, the British government "reserved to itself the right to re-introduce them."¹³³ An historical analysis of respondent's behavior with other

126. T. O'NEILL, *THE AUTOBIOGRAPHY OF TERENCE O'NEILL: PRIME MINISTER OF NORTHERN IRELAND 1963-1969* (1972).

127. *Id.* at 66-67.

128. European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3, reprinted in R. BEDDARD, *supra* note 76, at 184.

129. No. 5310/71, 41 Decisions and Reports 3 (European Comm'n on Human Rights, Oct. 1, 1972).

130.

[T]he applicant Government described the forms and effects of the previously authorized techniques. As regards wall-standing, the persons who were being interrogated were kept in an uncomfortable posture with the tips of their fingers against the wall for long periods. Their heads were hooded and they were deprived of sleep and food. They were also subjected to what the psychiatrists described as a "white noise" which was a continuing noise with the object of producing a sense of isolation in the victim as well as hallucinations. The hooding also produced a sense of isolation and disorientation and, it was claimed, in some cases a sense of panic or suffocation.

Id. at 55.

131. *Id.* (citing a report by Professor J. Bastiaans of Leyden University).

132. *Id.*

133. *Id.*

cultures supported the applicant's fears of re-introduction.¹³⁴ The Commission, therefore, found "appropriate and timely" new limits on permissible forms of interrogation.¹³⁵

With the widely-experienced forces of law and order in Northern Ireland performing their avowed peacekeeping function in this manner, some elements of the populace may have conceivably lost confidence in the regime. Furthermore, this data could help explain the belief, deeply-held by Argentine soldiers in 1982 in the Falkland Islands, that they would be tortured by their British captors.¹³⁶

134.

[T]hese interrogation procedures had been used in Malaya, Palestine, Kenya and Cyprus where they had similarly been discontinued until they were required again. Thus, they had been used again in the British Cameroons (1960-61), Brunei (1963), British Guiana (1964), Aden (1964-67), Borneo/Malaysia (1965-66), the Persian Gulf (1970-71) and in Northern Ireland.

Id. (citing the Parker Report).

135. *Id.*

The report of the Compton Committee in November 1971 confirmed that a selected number of suspects arrested in the internment operation had been subjected to what was called "interrogation in depth" over periods of up to five days. This involved subjecting the suspects to prolonged periods of interrogation interspersed with prolonged periods of wallstanding and other debilitating exercises; suspects were also deprived of food and sleep, hooded and exposed to continuous monotonous noise. There is little doubt that most were also subjected to repeated beatings though the precise extent of this was not established by the Compton Committee. The purposes of these "five techniques," as they came to be called, was clearly to break down the resistance of the suspects so that they would reveal all that they knew of terrorist organization and activity. They had been developed by the Army in its operations in Malaya, Kenya and Aden and appear to have been passed on to the RUC Special Branch, though the precise responsibility for their introduction has still not been clarified.

K. BOYLE, T. HADDEN & P. HILLYARD, *TEN YEARS IN NORTHERN IRELAND: THE LEGAL CONTROL OF POLITICAL VIOLENCE* 37 (1980) (citing Report of the inquiry into allegations against the security forces of physical brutality in Northern Ireland arising out of events on the 9th of August 1971, Cmnd. 4823, HMSO (London), 1971 (Compton Report)).

136. The official British overseas torture in Northern Ireland, the Cameroons, Brunei, British Guinea, Aden, Borneo/Malaysia and the Persian Gulf appears to have been recalled vividly during the 1982 Falkland Islands War. British newsman Jeremy Hands accompanied the British assault force on Goose Green:

The Argentine commanders had evidently told their men that the British would torture and kill them if they gave up. "When they found out that that was not going to be the case the relief on their faces was incredible to see," said Hands. "One of them burst into tears and many of them fell on their knees and began to pray."

Whitaker, Came, Stanger & Sethi, *The Falklands End Game*, *TIME*, June 14, 1982, at 48, 51. An early reliance on pro-British sources was necessary since even in mid-July 1982 foreign journalists were "normally excluded from the recaptured islands." Henry, *A Double Standard for Israel?*, *TIME*, July 12, 1982, at 51.

D. *The Welfare-Purchased Loyalty Defense*

Some commentators argue that the bulk of Northern Ireland's Catholic population prefers union with Britain over entry of the six counties into the Republic of Ireland because the Northern Ireland welfare state is more generous than that of the Republic.¹³⁷ Yet the welfare state is a tool that can be unleashed against an electoral minority which the electoral majority hopes to discourage from reproducing.

Consider the events of 1956. The Westminster government in that year increased family allowances and introduced a differentiation between the second child and subsequent children. A larger allowance was thereby paid for each child after the second. The Northern Ireland government, in introducing parallel legislation, revised the increase to operate the differentiation in reverse. Larger allowances were made for the second and third children, with smaller allowances for subsequent ones. Catholics pointed out that this departure from the Westminster formula was discriminatory, and many Unionists objected that it was a dangerous departure from the step-by-step policy. During June a Presbyterian General Assembly's resolution supported the Catholic complaint that the proposal could be read as intentional political discrimination against them. The resolution called on the government to fall into line with the English scheme. Thereafter, the government retreated, and preserved the step-by-step principle.¹³⁸

This argument is also circular. Justifying rule over an electoral minority through that minority's endorsement purchased with welfare would be unnecessary had the electoral majority not already ruled to prevent minority self-sufficiency. In other words, the British discriminatory rule created Catholic poverty which necessitated Catholic welfare dependency leading to Catholic acquiescence again perpetuating the British discriminatory rule.

Furthermore, some question arises whether, under democratic principles, majority rule self-determination truly exists where an incumbent regime has a friendly popular "majority" merely through political manipulation of local demography. The renowned scholar Alfred Cobban addressed this issue in 1919, during the same diplomatic era as the Anglo-Irish Treaty of 1921.¹³⁹ His discussion concerned the plight of the native French inhabitants of Alsace-Lorraine. Actual self-determination by these people was impossible

137. T. O'HANLON, *supra* note 125, at 238-43.

138. L. DE PAOR, *supra* note 103, at 129-30.

139. A. COBBAN, *THE NATION-STATE AND NATIONAL SELF-DETERMINATION* (rev. ed. 1969).

because large numbers had emigrated while an almost equal number of Germans immigrated to the area. Many viewed plebiscitary self-determination under these circumstances impossible.¹⁴⁰ Cobban observed:

There was a reasonable argument behind this position. *Can a state, it might well have been asked, annex territory inhabited by members of another nationality, remove large numbers of them by open or veiled pressure, or merely by the operation of their desire not to live under an alien government, introduce in their place its own nationals, and then claim the territory on the basis of self-determination?* Such a consideration suggests the need of qualifying the use of the plebiscitary method.¹⁴¹

A comparison to self-determination difficulties in Northern Ireland is inevitable. Britain now rules the territory of Northern Ireland after having removed the possibility of a Catholic absolute majority actually emerging either by "open or veiled pressure, or merely by a minority's desire not to live under an alien government."¹⁴² Britain therefore claims the territory on the basis of self-determination. As recently as 1982, however, the Thatcher administration apparently denied that any state legitimately can claim territory on the basis of self-determination through annexation, removal of inhabitants, and subsequent introduction of its nationals. The Thatcher government at that time seemed to agree that, under democratic principles, an incumbent regime cannot create majority rule self-determination through political manipulation of local demography.

The Anglo-Argentinian conflict illustrates in reverse British recognition of the difficulties in plebiscitary self-determination. Noel Annan revealed that, in the Spring 1982 Anglo-Argentinian negotiations

140. *Id.* at 72-73.

The French claimed Alsace-Lorraine on historic grounds and some doubt was felt "whether 'self-determination' in the shape of a plebiscite would give a clear majority for re-union with France." A French writer of the time put the difficulty bluntly: "At this moment in Alsace-Lorraine," he said, "any referendum would be meaningless." It has been estimated that about half a million French had left the conquered provinces between 1871 and 1910, and some 300,000 Germans had come in to take their place, a sufficient proportion of the whole population to produce at least an unpleasantly large minority vote for Germany in a plebiscite. Significantly, the Allies [and Britain was an Ally], in their reply to the German protest stressed the popular opposition to the annexation by Germany in 1871, rather than the sentiments of the population in 1919.

Id. Political scientist Lawrence T. Farley made a similar point just last year. L. FARLEY, *PLEBISCITES AND SOVEREIGNTY: THE CRISIS OF POLITICAL ILLEGITIMACY* 54-55, 96-98 (1986).

141. A. COBBAN, *supra* note 139, at 72-73 (emphasis added).

142. *See id.*

over the Falkland Islands, the Argentinian proviso most upsetting to the British was that, upon withdrawal of the Argentinian troops, their nationals should be free to reside and work on the islands.¹⁴³ Since Argentina invaded the islands while negotiations were in progress, the British no longer accepted Argentinian good faith. They believed the proviso proved the Argentinians had determined to flood the islands with their nationals and thereby "make any referendum go their way."¹⁴⁴

In Northern Ireland the incumbent rulers have ensured, through the political-economic manipulation of the local demography, that "any referendum [can] go their way" in the face of a continually impending, yet permanently thwarted, native Catholic Northern Ireland absolute majority.¹⁴⁵ Note how closely this Northern Ireland reality corresponds to the future of the Falkland Islands as allegedly anticipated by Argentina but repudiated by the Thatcher Administration. In 1982 London supported political manipulation of demography to reinforce British incumbency in Northern Ireland but not to erode British incumbency in the Falkland Islands.

143. Annan, *Mrs. Thatcher's Case*, N.Y. Rev. Books, July 15, 1982, at 20, 21-22. Annan is a former Vice-Chancellor of the University of London.

144. *Id.* There is evidence that France has manipulated the demography of New Caledonia to keep the nationalistic Kanaks (the indigenous Melanesian people) an artificial minority in their own country, and so has perpetuated French overseas imperialism. Martin, *France's Headache in South Pacific*, INSIGHT, Feb. 16, 1987, at 38, 39. In August 1986, the South Pacific Forum called for "reinscription" of New Caledonia on the United Nations' list of non-self-governing territories, thereby placing the matter under the supervision of the U.N. Committee on Decolonization. *Id.* at 38. Should international pressure ultimately press France from New Caledonia notwithstanding an artificially evoked pro-French local majority, that precedent would tend to favor British withdrawal from Ireland notwithstanding an artificially evoked pro-British local majority.

145. "In the fiscal year 1971-72, per capita public expenditure on social services in the North was 91 percent higher than in the Republic." T. O'HANLON, *supra* note 125, at 239.

In March 1973 voters were offered two propositions: to remain part of the United Kingdom or to be joined with the Republic of Ireland. The result was 591,820 in favor of the link with Britain, 6,463 for amalgamation with the Republic. A great number of Catholic voters abstained, or were prevented from voting by intimidation. Had all the Catholics voted, the majority would still have preferred the link with Britain. And for good economic reasons. However poor a Northern Ireland worker is — the average worker there earns 15% less than his counterpart in Britain — he is more affluent than the average worker in the Republic.

Id. Lord Longford, member of the Harold Wilson cabinet from 1964 to 1968 (during which time he was Leader of the House of Lords, Lord Privy Seal, and Colonial Secretary), and A. McHardy of *The Guardian* find this vote "of little value." Of the total electorate only 58 percent favored the British link. F. LONGFORD & A. MCHARDY, *ULSTER* 155 (1981).

IV. CONCLUSION

A. *Self-Determination in Northern Ireland*

The foregoing discussion suggests that an Irish nationalist rather than a Unionist outcome is possibly politically appropriate upon application of the democratic standard to Northern Ireland. Irish and Ulster division by Britain, as the frustration of majority rule self-determination, is arguably vulnerable to criticism upon two bases: the gerrymander principle, and the policy of political manipulation of local demography.

One commentator, in support of Irish unification, observed that the six northeastern counties of Ireland (i.e., Northern Ireland) suffer the plight which the six northeastern states of the United States (New England) would endure if an overseas sovereign, like Britain, ruled them.¹⁴⁶ Under those circumstances, resistance would be politically justified.¹⁴⁷

This analogy has elicited the rejoinder that in fact such "states," meaning Canada, exist which are loosely affiliated with England. Like the local majority in part of Ulster which refuses to join an Irish republic, the Canadians refuse to join an American republic. To the question of whether anyone forcing Canadians into an American republic through bombing would be a thug, the answer supposedly is obvious.¹⁴⁸

The question arises whether Northern Ireland is more like the contemporary Canadian monarchy or the hypothetical British-ruled, embattled New England. Britain needs no overseas army at war with Canadians to retain the Queen as a link between the two monarchies. However, Britain requires an overseas army at war with Irish men and women¹⁴⁹ to protract its domain over Northern Ireland.¹⁵⁰

Michael Collins, the Irish nationalist champion of the Anglo-Irish Treaty of 1921, observed:

So long as there are British troops in Ireland so long will the Orangemen [Northern Ireland Unionists] hold out. While they can look to Britain they will not turn towards the South. They are not giving up their ascendancy without a struggle. Any Irishman who creates and supports division amongst us is standing in the way of a united Ireland. While the Treaty is

146. O'Flaherty, *Letter to the Editor*, NAT'L REV., Oct 29, 1976, at 1157.

147. *Id.*

148. Cunningham, *Letter to the Editor*, NAT'L REV., Dec. 10, 1976, at 1318.

149. See generally M. McGUIRE, *TO TAKE ARMS: A YEAR IN THE PROVISIONAL IRA* (1973) (memoir of Maria McGuire).

150. O'Flaherty, *supra* note 56, at 527.

threatened the British will remain. While the British remain the North-East will keep apart. Just as the evil British policy of *divide and rule* is about to end for ever, we are threatened with a new division, jeopardising the hopes of Irish rule.¹⁵¹

Even such authority in favor of the Anglo-Irish Treaty of 1921 illustrates that contemporary Northern Ireland is more like the hypothetical British-occupied New England than unoccupied contemporary Canada. An overseas army dispatched to subdue a local populace is the distinguishing factor.

To be more precise in distinguishing Canada from Northern Ireland, Canadian nationalism is a variable independent of any overseas British army. No overseas British army must be factored into the Canadian political equation to sustain a local majority of Canadians choosing to be politically separate from the United States. If Canada were threatened by unpopular unification with America, British troops dispatched to hold the Canadian border would merely constitute a military variable *dependent* upon the independent variable of Canadian nationalism.

Conversely, in Northern Ireland the British military factor is the *independent* variable upon which depends the so-called majority resistance to unification with the twenty-six counties depends. This corresponds to Collins' view: "While the British remain the North-East will keep apart."¹⁵² Collins' point has elicited emotional, indeed bloody, hostility spanning several generations. But opponents of Collins' hypothesis seem unwilling to put it to the test.

If the independent variable, the British army, is factored out of the Northern Ireland equation, then the dependent variable, the so-called majority resistance to unification with the twenty-six counties, could also be factored out. Collins found that as long as British troops remain, the unification foes will not turn towards the twenty-six counties. "They [will] not [give] up their ascendancy without a struggle."¹⁵³

Political reappraisal of the democratic legitimacy or illegitimacy of British rule over Northern Ireland is particularly timely during

151. M. COLLINS, *supra* note 57, at 95-98 (emphasis in original). Collins further stated:

The fact of union is too strong to be interfered with without the presence of the foreigner bent on dividing us. With the British gone the Orangeman loses that support which alone made him strong enough to keep his position of domination and isolation. Without British support he becomes what he is, one of a minority in the Irish Nation. His rights are the same as those of every Irishman, but he has no rights other than those.

Id. at 96.

152. See *supra* text accompanying note 151.

153. *Id.*

1987. This is the eighteenth consecutive year of the current phase of Northern Ireland's recurrent nationalist struggle in the name of majority rule self-determination.

B. Self-Determination in the Late 1980s

A message from the Dublin brigade of the IRA accompanied the July 20, 1982, Provisional IRA strike in London. This post-Falkland Islands War message declared: "Now it is our turn to properly invoke article 51 of the UN statute and properly quote all Thatcher's fine phrases on the right to self-determination of a people. The Irish people have sovereign rights which no task force can put down."¹⁵⁴ However, Prime Minister Thatcher assailed the "evil and brutal men who know nothing of democracy."¹⁵⁵

The preceding discussion comparing Irish and British pronouncements concerning self-determination and democracy may assist the reader in clarifying which of the two combatant parties in truth speaks for majority rule. Indeed, in 1983, Prime Minister Thatcher repeated:

If the majority of the people in Northern Ireland wish not to be [part of Britain], obviously we would honor their wish, whether it was to be independent or to join up elsewhere. Northern Ireland is part of the United Kingdom because of the wish of the majority of her people.¹⁵⁶

Mrs. Thatcher reiterated her views on November 19, 1984, after a summit meeting with Republic of Ireland Prime Minister Garret Fitzgerald.¹⁵⁷

154. *9 Killed as IRA Bombs Rip London*, The Toronto (Canada) Star, July 20, 1982, at A4, col. 6. The University of Alberta's expert on self-determination, Professor Leslie C. Green, has criticized this declaration. Green, *Letter to the Editor*, The Globe and Mail (Toronto, Canada), July 28, 1982, at 6, col. 3. The allusion apparently is to Articles 1(2) and 55 (not "51") of the U.N. Charter (not "statute").

155. *IRA Bombs Kill Eight*, The Toronto (Canada) Sun, July 21, 1982, at 2, col. 1.

156. *Thatcher: On the Record*, NEWSWEEK, May 16, 1983, at 49.

157. "Northern Ireland is part of the United Kingdom. She is part of the United Kingdom because that is the wish of the majority of her citizens. The majority wish to stay part of the United Kingdom." Almond, *Talks on Ulster Yield Small Step*, Washington (D.C.) Times, Nov. 21, 1984, at 9A, col. 1.

Mr. FitzGerald did not get the cooperative agreements his government had hoped for from this security-shrouded summit at the British prime minister's official home in the English countryside. But for the first time, he did get an acknowledgement from Mrs. Thatcher that the Irish government should not be excluded from areas previously considered exclusively internal matters of Britain—policing, prisons and the judiciary of Northern Ireland.

Id.

Some parties assessing the foregoing speculative review of the evidence might have concluded that some accommodating implementation of majority rule self-determination is appropriate to the Northern Ireland case. However, Mrs. Thatcher also confirmed: "I have made it quite clear that a unified Ireland was one solution that is out. A second solution was a confederation of two states. That is out. A third solution was joint authority. That is out — that is a derogation of sovereignty."¹⁵⁸

Elements of the Northern Ireland Protestant population bitterly assailed¹⁵⁹ the broadly-hailed¹⁶⁰ Ireland-U.K.-Northern Ireland accord. But that agreement does not provide for Irish unification as Northern Ireland self-determination. Rather, it establishes an Inter-governmental Conference concerned both with Northern Ireland and with relations between the two parts of the island of Ireland.¹⁶¹ Yet Article 2(b) concludes: "There is no derogation from the sovereignty of either the Irish Government or the United Kingdom Government, and each retains responsibility for the decisions and administration of government within its own jurisdiction."¹⁶²

Future political reappraisal of the British rule over Northern Ireland, constantly disputed since before the Anglo-Irish Treaty of 1921, might well utilize not only the self-determination principle, but the territorial integrity principle of international law. This territorial integrity principle has been included in such diplomatic and international law instruments as Article 10 of the Covenant of the League of Nations,¹⁶³ Article 2(4) of the Charter of the United Nations,¹⁶⁴ the 1954 Pacific Charter appended to the South-East Asia Collective Defense Treaty,¹⁶⁵ Part G of the Final Communique of the 1955 Bandung Conference,¹⁶⁶ U.N. General Assembly Resolution 1514 (XV) of December 14, 1960,¹⁶⁷ Article III(3) of the Charter of the Organization of African Unity,¹⁶⁸ U.N. General Assembly Resolution 2625 (XXV) of October 24, 1970,¹⁶⁹ and the August 1, 1975, Final Act of

158. *British and Irish Chiefs Discuss Ulster's Future*, N.Y. Times, Nov. 20, 1984, at 4, col. 6.

159. *Protestants Pelt Police in March in N. Ireland*, Times-Picayune (New Orleans, La.), Jan. 5, 1986, at A-16, col. 1.

160. See Editorial, *The Irish Accord Holds*, N.Y. Times, Jan. 29, 1986, at 30, col. 1.

161. *Agreement*, *supra* note 1, art. 2(a), at 1583.

162. *Id.* art. 2(b), at 1584.

163. 13 AM. J. INT'L L. 128, 131-32 (Supp. 1919).

164. 39 AM. J. INT'L L. 190, 191 (Supp. 1945).

165. For the text of the Pacific Charter, see J. GRENVILLE, *THE MAJOR INTERNATIONAL TREATIES 1914-1973*, at 343 (1974).

166. Cited in G. KAHIN, *THE ASIAN-AFRICAN CONFERENCE* 84 (1986).

167. G.A. Res. 1514, 15 GAOR Supp. (No. 16), at 66-67, U.N. Doc. A/4684 (1960).

168. For the text of the O.A.U. Charter, see J. GRENVILLE, *supra* note 165, at 484.

169. 9 I.L.M. 1292 (1970).

the Conference on Security and Cooperation in Europe (the "Helsinki Agreement").¹⁷⁰ As one commentator observed: "[T]he British government will have to both declare their [sic] intention of subscribing to these two fundamental universal principles of self-determination and the promotion of territorial integrity and to formulate policies for their implementation."¹⁷¹

170. 14 I.L.M. 1292, 1294-95 (1975).

171. McEvoy, *supra* note 75, at 22, col. 3.
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