

The Vestigial Union

Northern Ireland's Precarious Place in the Molten Constitution

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I. Executive summary

This paper looks at the historically exceptional and precarious place of Northern Ireland in the uncoded and pliable constitution of the United Kingdom of Great Britain & Northern Ireland. Since 1922 the Acts of Union (1707) and Acts of Union (1800) remain in place despite *de facto* – and since 1948 *de jure* – Irish independence, creating a ‘Vestigial Union’ between Northern Ireland and Great Britain. The formation of the Unions through three centuries demonstrate a pattern of themes. Firstly, English self-interest and English nationalism are crucial in forming the Unions. Secondly, British – mainly English – politicians politicise the Unions and periodically demonstrate a willingness to involve themselves in Irish and Northern Irish politics and involve Ireland and Northern Ireland in British politics to appeal to their home constituency. Thirdly, English and British policymakers treat Northern Ireland as a constitutional exception with a willingness to innovate forms of (and suspend) self-government. Fourthly, Northern Ireland’s constitutional exceptionalism causes structural precarity, as Northern Ireland’s constitutional status is changeable and a feature of its regular political discourse. Fifthly, the Protestant-Unionist-Loyalist (PUL) community are – despite eponymous professions of loyalism and unionism – willing to resort to the threat – and the actual use – of physical force and extra-constitutional action to secure their political ends.

The paper then looks at how those patterns and themes evolve and apply to the current constitutionally precarious position of Northern Ireland today. Issues such as Brexit, unstable devolution, the politicisation of the Troubles legacy within Northern Ireland, the prospect of a second referendum on Scottish independence and increased willingness for British politicians to use Northern Ireland as a political tool outside Northern Ireland affect political discourse and, in turn impact on the support for power-sharing institutions and the current constitutional settlement of Northern Ireland within the United Kingdom.

II. Introduction

This paper examines the constitutional history of Northern Ireland. Parts three and four examine the drivers behind the Acts of Union (1800) (British-Irish Union) and look at the context within the Acts of Union (1707) (Anglo-Scots Union). Part five then examines the movement against the Acts of Union (1800), which emerged within two decades, and how that movement evolved and splintered during the nineteenth century. Part six examines the crisis point of the Home Rule movement during the Orange Agitation from 1911-1914 and the role of Ulster and British Unionism during the Ulsterian Revolution and looks at the political and constitutional options explored then. Part seven examines the legislative and constitutional innovation of the Government of Ireland Act (1920) and the institutions of the partitionist state within the United Kingdom context, leaving a vestigial union between Great Britain and the six north-eastern counties of Ireland. Part eight focuses on the Sunningdale era that looked to transform the constitution of Northern Ireland and, during the Wilson years, radically change the constitutional place of Northern Ireland.¹ Part nine then explores the issues raised in the earlier sections against contemporary political issues and seeks to reveal continuities and consistency over the past two centuries.

¹ The British-Irish Union is enshrined in legislation, sometimes wrongly called the 'Act of Union (1801)', but correctly – by parallel legislation that passed through the Irish parliament and Great British parliament – as the Acts of Union (1800): 40 Geo 3 cap 38 (The Act of Union (Ireland) (1800)) and, 39 & 40 Geo 3 cap 67 (The Union with Ireland Act (1800)). Similarly, the Anglo-Scots Union is two parallel pieces of legislation called the 'Acts of Union (1707)': 1706 cap 11 (Union with Scotland Act (1706)) and, 1707 cap 7 (Union with England Act (1707)).

III. Onus Rex, Unas Gex et una lex: the Unions in the *longue durée*

Current political issues from the Northern Ireland Protocol to English nationalism to IndyRef2 lend themselves to a declinist analysis of the Union; the balance seems weighed against the constitutional longevity of the United Kingdom. Scholars – perhaps more attracted to the drama of collapse than the calm and patience of constitutional construction – have tended to focus on the ‘declinology’ of the Union rather than its durability.² A cursory look at recent publications on the British-Irish Union demonstrate declinology; *A United Ireland: Why Unification Is Inevitable And How It Will Come About* and *32 Counties: The Failure Of Partition And The Case For A United Ireland* being two obvious examples.³ There is no place for the word ‘inevitable’ in historical scholarship, but it is particularly tedious and inappropriate in Irish scholarship with its strands of reductionist, determinist and teleological history where history is not so much politicised, but where politics is historicised. This paper attempts to give a non-determinist analysis of the Union and, while exploring possible decline, examines possible durability too.

The fate and progress of proposals for Union in the seventeenth century demonstrate English self-interest as plans failed and succeeded ultimately in London, where English nationalism appeared as anti-Scottish bigotry that hindered James VI & I's constitutional policies. The genesis of Ulster exceptionalism and extra-constitutionality is found in this period too; waves of migration from Scotland coincided with Plantation from London that created a distinct land system in the province and a cross-class Protestantism not found in the rest of Ireland. The United Kingdom of Great Britain & Northern Ireland's territory and settlement is rooted in the Acts of Union (1800) as amended by the Government of Ireland Act (1920); notably, the British-Irish Union is not revoked but reformed to a vestige of itself after the creation – in separate statutes – of Northern Ireland and the Irish Free State in 1921.⁴ The British-Irish Union followed and expanded the territory of the Anglo-Scots union of 1707, a settlement that itself followed on a century after the unsuccessful Union of the Crowns (1603).

James VI & I failed to unite his two kingdoms (forgetting his third kingdom across the Straits of Moyle, which he considered a dependency of England) through a combination of naïveté, tactlessness and English xenophobia.⁵ Seventeenth-century English xenophobia is an approximate continuity with English nationalism in later periods, as is metropolitan disregard for Ireland. Keen to secure the dynastic succession of both thrones (demonstrating further indifference to the third: the throne of Ireland), the Stuart monarch saw his plans for ‘Great Britain’ as personal and divinely ordained, telling the unconvinced English parliament on his first address to them in March 1604:

2 Alvin Jackson, *The Two Unions: Ireland, Scotland, and the Survival of the United Kingdom, 1707-2007*, (Oxford: OUP, 2012), p.24.

3 Kevin Meagher, *A United Ireland: Why Unification Is Inevitable And How It Will Come About*, (London: Biteback, 2016) and, Kieran Allen, *32 Counties: The Failure Of Partition And The Case For A United Ireland*, (London: Pluto, 2021).

4 10 & 11 Geo 5 cap 67 (The Government of Ireland Act (1920)), creating Northern Ireland and the abortive Southern Ireland and; 12 & 13 Geo 5 cap 4 (Irish Free State (Agreement) Act (1922)), implementing the Anglo-Irish Treaty and 13 Geo 5 sess 2 cap 1 (Irish Free State Constitution Act (1922) (Session 2)), ratifying the Constitution of the Irish Free State and formally ratifying the Anglo-Irish Treaty.

5 James VI & I (1566-1625) King of Scotland (1567-1625) and King of England, Scotland & Ireland (1603-1625), and S J Houston, *James I*, (London: Longmans, 1995), pp.28-29.

What God hath conjoined then, let no man separate. I am husband, and the whole isle is my wife; I am the head and it is my body [...] I hope therefore no man will be so unreasonable to think that I [...] should be a polygamist and husband to two wives.⁶

The English Parliament, remembering recent Anglo-Scot hostilities, fearing the watering down of their 'exceptional' ancient liberties, and weary of countless impoverished and 'beggardly' Scots streaming over the border in search of alms were 'so unreasonable' and, along with the English courts, rejected steps towards a Union.⁷ Scottish feeling towards Union was more positive than English; however, reluctance, especially over losing their king to the metropolitan capital in London, anxiety over an English foreign policy much more adventurist and assertive than Scotland's and an unwillingness to surrender privileged trading and diplomatic relations with Europe's preeminent power France also weighed against the king's plans. James mitigated his legislative failures with cultural and political changes that fostered closer links between 'North Britain' and 'South Britain'; mingling the still separate Privy Councils, taking control of and bringing order to the Border Marches, repealing mutually incongruous laws in both realms and changing his style by proclamation and using 'King of Great Britain' on coinage and paraphernalia.

The success of the future Acts of Union depended on pragmatism and mutual (although chiefly English) self-interest; those conditions did not prevail during James's reign when he failed to overcome seventeenth-century English nationalism and treated Ireland with indifference. Significantly for this research, he accelerated English and Scottish plantation and migration to Ulster. The distinctive ethnic-cultural-religious admixture that repopulating created is a critical theme in Northern Ireland's place in the United Kingdom's constitution. The durability of the Anglo-Scots Union (and the related failure of the Union of the Crowns) is important, as its perceived success, and presumptions over Scottish willingness to unify, legitimised British-Irish union ninety-four years later (with a three-kingdom revolution taking place in between). The continuation and benefits of the Anglo-Scots Union of 1707 buttressed support for the British-Irish Union in 1800.

One hundred and four years after James VI & I's failed Union of The Crowns, Queen Anne succeeded in uniting her two British kingdoms.⁸ The deteriorating relationship between England and Scotland and the intensification of the 'racial antagonism and national animosity' between the two countries made the successful passage of the Acts of Union (1707) all the more unexpected.⁹ Oliver Cromwell's Protectorate republican parliamentary union from 1651 to 1659 – the Tender of Union (1651) imposed on Scotland to join the Commonwealth and led to the shortlived and non-consensual Act of Union (1657) – enjoyed little support and collapsed with the Restoration in 1660 and left a legacy of resentment.

The Wars of the Three Kingdoms (1639-1653) period bears particular cultural significance on Ulster despite having a limited constitutional effect in the province. Recently settled and planted Scottish and English Protestants – dissenter Presbyterians and episcopalians respectively – faced the Irish Rebellion of 1641. Irish Catholics attempted to forcefully repossess land recently seized and confiscated from them by the settlers at the direction of James VI & I. James saw plantation as an opportunity to promote a joint-

6 J R Tanner, *Constitutional Document of the Reign of James I*, (Cambridge: CUP, 1925), p.25.

7 Steven Ellis, *The Making of the British Isles*, (Harlow: Pearson, 2007), p.291.

8 Queen Anne (1665-1714), Queen of England, Scotland & Ireland (1702-1707) and Queen of Great Britain (1707-1714).

9 Barry Coward, *The Stuart Age: England, 1603-1714 (4th Edition)*, (London: Routledge, 2014), p.430.

Anglo-Scots 'British' colony in Ireland. The rebellion quickly descended into a bloody ethnoreligious conflict in Ulster, with the settlers especially vulnerable to attack. Crown-Parliament tensions in London delayed Charles I's promises to intervene, leaving the settlers to fend for themselves. Ulster Protestants formed cross-class bands and arrayed in arms as the Crown failed in its trusteeship and Lockean social contract to the community.¹⁰ Faced with a perceived existential threat and without the reliable protection of the metropolitan government Ulster Protestants – feeling the Crown's relinquishing of its side of the contractarian relationship – armed themselves.

The same pattern followed later in the Volunteerism of the eighteenth century, the Defenderism of the nineteenth century and in the Ulster Volunteer Force and Ulster Special Constabulary of the twentieth century – if British and United Kingdom policy is not supported by Ulster Protestants, they feel justified to defy the government, by force if necessary. Significantly, the defiance by Ulster Protestants of royal authority against Catholic James VII & II during the Williamite-Jacobite War in Ireland (1688-1691) provided historical precedent to challenge and defy the Crown, the government and made – and continues to make – Ulster Protestant loyalty highly contractual and conditional. Siege mentality, defiance, solidarity, sacrifice and deliverance in the period echoes down the centuries in the Ulster Protestant mythology.¹¹ The siege mythology justifies regular periods of loyalist-rebellion and militant defiance of the British and United Kingdom government over three and a half centuries.

The Dutch Invasion of 1688 resulted in William III & II conceding constitutional and ecclesiastical independence to his Scottish realm.¹² Just as Irish legislative independence marked the immediate period before British-Irish union, so too did 'eighteen years of legislative freedom' in Scotland before 1707.¹³ Scottish and Irish freedoms to act counter to English interests is an essential factor in understanding English support for the unions. Despite the 1700s being a period of increased anti-unionism, the kingdoms formed a hasty economic and parliamentary union in 1707.

The deterioration of Anglo-Scot relations motivated English support for the Union. When Scotland asserted trade and foreign policy independence and England faced a series of general European (more accurately 'global') wars, a union served English self-interest, as it would in the next century with Ireland. The Glencoe Massacre of 1692 and the failed Company of Scotland and its Darien Scheme in 1698 seriously embittered Anglo-Scot relations during the Nine Years' War (1688-1697) against France.¹⁴ The Franco-Scottish 'Auld Alliance' remained contrary to William III's English and Dutch foreign policy. The king's post-war concern to maintain the peace and over Spanish sensitivities to Scottish colonisation in the Indies led him – with the encouragement of the East India Company – to persuade Dutch investors to withhold support from the Darien scheme and explicitly forbid English investors from doing the same or provisioning the colony; Scots recalled the failure as an act of English treachery. Repaying Scottish losses on the scheme provided a carrot for English negotiators in 1707. The War of

10 David W Miller, *Queen's Rebels, Ulster Loyalism in Historical Perspective*, (Dublin: UCD Press, 1978 (2007)), p.25.

11 Ian McBride, *The Siege of Derry in Ulster Protestant Mythology*, (Dublin: Four Courts Press, 1997), p.12.

12 Dutch Invasion (also known as *The Glorious Revolution*) (1688) 463 Dutch ships and 40,000 men landed in south-west England under William of Orange, Stadtholder of the Dutch Republic with the support of some influential English aristocrats to successfully dethrone James VII & II and William III & II, Prince of Orange (1650-1702) Stadtholder (1672-1702) and King of England, Scotland & Ireland (1689-1702), *ibid.* p.431. (Coward, *The Stuart Age*).

13 Jackson, *The Two Unions*, p.83.

14 Glencoe Massacre (13 February 1692) killing of around thirty members of Clan MacDonald by Scottish government forces loyal to William III & II and Mary II, and Company of Scotland Trading to Africa and the Indies (1695-1707).

the Spanish Succession (1701-1714) against a French-led alliance saw further friction between the two kingdoms. With the Royal Navy blockading French trade, the Scottish Parliament passed the Wine Act (1703) and the Wool Act (1703), allowing Scottish merchants to trade wool and wine with France during the war, followed by the Act Anent Peace and War (1703) which gave the Scottish Parliament the power to declare war, rather than Anne's successors.

With the future union-monarch stripped of the war prerogative in Scotland, the Parliament went further, passing the Act of Security of the Kingdom (1704) that side-stepped the English Act of Settlement (1701), which secured the Hanoverian succession; the Scottish Parliament would choose Anne's successor north of the border.¹⁵ The English Parliament retaliated with the Alien Act (1705) that threatened to cut trade with Scotland and seize Scottish property south of the border if the succession was not harmonised. With the Scottish economy chronically underdeveloped and in perpetual crisis post-Darien, and English trade replacing French-European trade as the principal source of national income, the Alien Act was no small problem for Scotland.

An antagonistic Scotland with an autonomous foreign policy sympathetic to France posed a national security threat for England. By 1702 Anne and the influential Whig Junto decided on Union despite Tory objections to Scottish Presbyterianism and the country's economic underdevelopment. For Scotland, a customs union and 'the Equivalent' – a £398,085. 10s. 0d. payment to Scotland for taking on England's national debt and the cost of the Darien Scheme – alongside a guarantee of legal and Kirk independence provided a carrot to encourage support.¹⁶ The prospect of English occupation and trade boycott, of French intervention with a likely civil war following a Catholic Jacobite succession, provided the stick; the Scottish Parliament (with strong suspicions of bribery) approved the Union before its English counterpart.

Fear and resentment at Scottish autonomy, the push for free trade and customs union, and a national security threat in times of continental and global war drove English support for the Anglo-Scots union (also along with suspected bribery). These themes mirrored British support for and justified British-Irish union nearly a century later. Just as the 1707 Acts of Union buttressed those of 1800 in inception, the two sets of Acts (or the vestige of the latter) rely on each other for their continued durability.

15 Act of Settlement (1701), confirmed English and Irish succession as exclusively Protestant and deposed the remaining Stuart line and passing over to James VI & I's granddaughter Electress Sophia of Hanover and her descendants.

16 The Kirk: the Calvinist Presbyterian 'national' Christian church of Scotland with origins in the Scottish Reformation of 1560.

IV. The Unions of 1800

The period of the Union of 1800 demonstrates the themes of English – at this point ‘British’ – self-interest. A fear that events in Ireland could mirror the recent loss of thirteen North American colonies and that French Jacobinism might inspire a revolution in Ireland and turn it into a bridgehead for invasion of Britain led to quickly reversed concessions to Irish demands for autonomy and legislative independence. The Union of 1800 also illustrates the theme of constitutional precarity as the relationship between Britain and Ireland swung from dependency to legislative independence to repression and finally to unequal Union.

In the years before the Acts of Union (1800), Ireland asserted autonomy from Great Britain that ultimately led to the ‘Constitution of 1782’. Conscious that disquiet led to Britain’s defeat in the American Revolution– and the increasing assertiveness of the Volunteer movement in seeking concessions towards Irish legislative independence – the British Parliament passed the Repeal of Act for Securing Dependence of Ireland Act (1782) that rescinded the Declaratory Act (1719), previously giving the British Parliament the right to legislate for Ireland.¹⁷ The Declaratory Act’s demise allowed for greater Irish autonomy with the repeal law accompanied by three further provisions; a new Mutiny Act (1782) limiting the time mutiny legislation applied to Ireland; the Habeus Corpus Act (1782), and; the Courts Act (Ireland) (1782) supporting judicial independence and securing a judge’s tenure for life during good behaviour.

Within a month, the newly empowered and autonomous Irish Parliament – referred to as Grattan’s Parliament – passed Yelverton’s Act (Ireland) (1782), amending Poyning’s Law (1494) that had forbidden the meeting of a parliament in Ireland until both the Lord Deputy of Ireland and the King of England approved its proposed legislation.¹⁸ The Crown and Privy Council retained the rarely exercised power of veto. Parliamentary reform – a typical demand of contemporary radicalism – formed an important section of the Irish Parliament. In 1783, Irish parliamentary reformers secured a further concession with the passing in Westminster of the Renunciation Act (1783). The act made explicit the British Parliament’s renunciation of any intention to legislate on Ireland’s behalf. Later, Hobart’s Relief Act (1792) removed some penalties against Irish Catholics. Despite representing a small landed Episcopalian ‘Ascendency’ class, the Irish Parliament demonstrated autonomy and the ability to legislate in its interest, just as the Scottish Parliament had before 1707.

Alvin Jackson argues, ‘a central concern of Union was the creation of a free trade area within the British Isles.’¹⁹ The French Wars (1792-1815) saw the Irish economy boom in the last decade of the eighteenth century as the population more than doubled through the preceding century. Just as the Scottish economy became increasingly dependent on Anglo-Scot trade in the decades before 1707, by 1800, eighty-five per cent of Irish exports went to Great Britain, and seventy-five per cent of Irish

¹⁷ 6 Geo I cap 5, is known variously as the Securing Dependence of the Kingdom of Ireland on the Crown of Great Britain Act (1719), the Declaratory Act (1719), and the ‘Sixth of George I’.

¹⁸ Henry Grattan (1746-1820) Irish lawyer that led the campaign for legislative independence within a joint British-Irish monarchy and, 10 Hen 7 cap 4 (An Act that no Parliament be holden in this Land until the Acts be certified into England (Ireland) (1494)).

¹⁹ Jackson, *The Two Unions*, p.83.

imports came the other way.²⁰ Irish and British trade benefitted from tariff- and custom-free trade, but a well organised and vocal business lobby mobilised in Dublin against the financial and economic clauses of the Acts of Union. Since legislative independence in 1782, Dublin boomed as a national *de facto* capital and absorption into the metropole risked the city's thriving economy; by the early 1800s the city – *sans* Parliament – became a husk of its former self. Concerns of absorption into the United Kingdom and the loss of local autonomy echoed Scottish concerns ninety-four years earlier.

The major motivation for the British-Irish Union remained British self-interest – in 1707, English self-interest – in the form of national security. Just as continental war with France and the potential for Scotland to be a bridgehead for attack focused Anne and the Junto on Union, similarly the potential for France to use Ireland as a bridgehead to invade Britain drove William Pitt the Younger and his ministry. Eighteenth-century fears were never realised; nineteenth-century fears were. In 1791, the twin Irish impulses of parliamentary reform and Catholic emancipation came together with the founding of the United Irish Society (UIS).²¹ The leadership of the emancipationist Catholic Committee had transformed from deferential and aristocratic to radical and middle class, and it saw common cause with the emergent UIS, which sprung from frustration at the failure of Irish Whig reform proposals.²² By 1794 the Irish Whig manifesto was a dead letter, and the prosecution of war against the French Republic saw popular support for radicalism dramatically ebb with the UIS suppressed in May. In 1796, Britain imposed suppression legislation on Ireland and created a loyalist Yeomanry to augment crown force locally. Outwardly radical, the UIS became increasingly republican and revolutionary and influenced by Jacobinism, with its leader, the Presbyterian Theobald Wolfe Tone, visiting France to organise military support from the Republic for a planned UIS rising.²³

The Directory of the French Republic dispatched over forty ships and 15,000 men in December 1796 under General Lazare Hoche to land at Bantry Bay in County Cork.²⁴ Atlantic storms scattered the *Expédition d'Irlande*, and it and Wolfe Tone returned to France. Hoche's failed landings made real British fears of Ireland as its soft underbelly, and from late 1796 General Gerard Lake began a heavy-handed – if not brutal – repression of suspected radicals in Ulster, the most revolutionary-minded (and Presbyterian) UIS province.²⁵ Lake's repression spread across Ireland, and by March 1798, the entire island was under martial law. Significantly, in 1797 the UIS – which created a parallel military organisation – merged with the Defenders, a Catholic secret masonic-like society. A Catholic agrarian society, Defenderism was a response to raids on Catholics by the Protestant agrarian societies such as the Peep o'Day Boys. The Peep o'Day Boys defeated the Defenders at the Battle of the Diamond, County Armagh, in September 1795—the local Peep o'Day Boys formed the Orange Order in the immediate aftermath of the battle. After the Battle of the Diamond, the Defenders – initially concerned with economic and land reform – became increasingly sectarian and – just like the UIS – increasingly sympathetic and supportive of the

20 Paul Bew, *Ireland: The Politics of Enmity 1789-2006*, (Oxford: OUP, 2006), p.62.

21 United Irish Society (founded 1791) republican organisation inspired by the American and French Revolutions to push for measures beyond parliamentary reform in Ireland that ultimately led to the Rebellion of 1798 and, Alvin Jackson, *Ireland 1798-1998: War, Peace and Beyond (Second Edition)*, (Chichester: Wiley-Blackwell, 2010), p.12.

22 Catholic Committee Catholic rights organisation in Ireland campaigning for repeal of the Penal Laws disbanded in 1793 with the passing of the Catholic Relief Act (1793).

23 Theobald Wolfe Tone (1763-1798) Presbyterian leader of the UIS that led the Rebellion of 1798.

24 Louis Lazare Hoche (1768-1797) general of the Revolutionary Army who held command in the Vendée and led the Irish Expedition.

25 Gerard Lake (1744-1808) commander of British forces in Ireland during the Rebellion of 1798 and later a Member of Parliament.

French Revolution and Jacobinism. Cooperation between the two groups and the prospect of French support for the movement worried Dublin Castle.²⁶ In May 1798, the UIS-Defenders rose in rebellion and in August, General Jean Humbert landed with a small French force in Killala, County Mayo and declared a largely theoretical Irish Republic, the client Republic of Connacht.²⁷

Humbert landed too late for the UIS-Defenders. The defeat of the Wexford Republic at Vinegar Hill in June 1798 ended the best hopes of an actual Irish Republic.²⁸ Even if the Irish Parliament and the Ascendancy class it represented remained largely loyal and actively – along with an emerging plebian Orange movement – persecuted the Rising of 1798, the episode realised British fears of Ireland as a national security risk. Firstly, the French Revolution posed an existential threat to social order, and in Ireland, parliamentary radicalism merged with homegrown Jacobinism to demand – by mobilising around 50,000 armed men – a republic on the island. Secondly, the rebels courted French Republican support, and the Directory sent a fleet to support the Rising and establish a sister republic in 1796. During the Wars of the Spanish Succession, the Junto feared a French landing in Scotland and the restoration of the Catholic Stuart monarchy leaving England's northern border susceptible to invasion. During the Revolutionary Wars, the French did land and did, unsuccessfully, support the establishment of a majority-Catholic republic. Union was the answer to England's problem in 1707, and so it was again for Britain in 1800.

Pitt revived plans for Union that better accommodated the Catholic majority and aimed to be more inclusive than the Constitution of 1782.²⁹ Emancipation remained a central popular demand, and by redistributing Irish representation to county seats away from the corrupt and controlled borough seats went some way to meeting demands for parliamentary reform. If Pitt proposed an early form of 'constructive unionism', it soon encountered a dilemma. The pro-union Protestant and Ascendancy class hoped to maintain its exclusivist and privileged position without concessions to the majority in the Union; the anti-union Catholic class (and rapidly dwindling in a wave of sectarianism, Presbyterian and Dissenter class) hoped for concessions towards inclusivity and equality with access to the state but outside the Union. The Rising of 1798 centralised the Irish administration and greatly bolstered the military, and simultaneously, as Jackson notes, the Acts of Union (1800) allowed Pitt to, potentially, impose an inclusive and constructive Union:

In sum, the Gordian bind of Irish politics for the British government was that the constitution needed reform, its closest allies generally would not accept reform, while the reformers in Ireland generally would not accept the British government. Little wonder that Pitt and his lieutenants sought to cut through this knot with the surgical steel of Union.³⁰

If, outwardly, two peer states negotiated the Acts of Union (1707), the same cannot be said for the

26 Dublin Castle acted as the seat of the executive of the Irish government. Although separate from the British government, it was headed by British appointees and – through patronage and persuasion – held considerable influence over the Irish parliament.

27 Jean Humbert (1767-1823) French general commanding forces to support the UIS during the Rebellion of 1798. Humbert was captured at the Battle of Ballinamuck and exchanged as a prisoner of war shortly afterwards.

28 Battle of Vinegar Hill (21 June 1798) British forces successfully attacked the Wexford UIS camp outside Enniscorthy to take control of County Wexford.

29 William Pitt the Younger (1759-1806) Tory politician and Prime Minister of Great Britain (1783-1801) and Prime Minister of the United Kingdom of Great Britain & Ireland (1804-1806).

30 Jackson, *The Two Unions*, p.85.

Acts of Union (1800). However, whilst not a federation, the Anglo-Scot union was 'federative' and included 'semi-independence' for Scotland with autonomous institutions – courts and Kirk – guaranteed in the clauses. The British-Irish Union was 'incorporating' folding the Irish Episcopalian church into the Church of England and removing the appellate jurisdiction of Irish courts previously exercised through the Irish House of Lords.³¹

Before the Constitution of 1782, Britain considered Ireland a dependency and in 1800 did again. Bribery, which was suspected in 1707, was blatant and apparent in 1800. The Crown wielded considerable influence in the Irish Parliament through the eighteen years of legislative autonomy and easily, through 'placemen', generous pensions and the promotion and creation of new peerages, secured the passage of the Union in Ireland. The Ascendency also recognised that the Rising of 1798 discredited Grattan's Parliament and that the Union served their interest as part of a Protestant majority in the United Kingdom. The Acts of Union were not only not between two peer states, but also not between two countries; instead uniting Britain and the Ascendency 'a party in Ireland'.³² Many Protestants saw the rebellion as a Catholic rebellion (disregarding the radicalism of Ulster's Presbyterians and Dissenters) and looked to an uncertain future in a country as a resented controlling minority.³³ Union offered the Ascendency a higher degree of security, just as Union bolstered Great Britain's national security. A further difference between the Acts of Unions, highlighted by Jackson and relevant later on, is that while racial theory – a common Teutonic bond – promoted the Anglo-Scot Union, Ireland was a distinctive Gaelic country.³⁴ The British-Irish Union lacked racial harmony, but not in Ulster where the Anglo-Scot ethnic exceptionalism of Ulster Protestants; considered in the same racial theory 'Teutonic' and placed them much better in the United Kingdom than their Gaelic Catholic neighbours.

With the memory of French landings and rebellion fresh in British minds, the Union quickly passed the British Parliament. Parliamentary reform and Catholic relief did not follow. Supported by the anti-emancipationist John Fitzgibbon, Earl of Clare and Lord Chancellor of Ireland, George III protested that the Acts undermined his coronation oath to uphold Protestant primacy; Pitt and a sizeable part of his ministry resigned.³⁵ Henry Addington replaced Pitt as Prime Minister, and his ministry pursued an anti-emancipation and Protestantising policy in Ireland, where Fitzgibbon implemented a 'remorseless Protestant vision'.³⁶ That vision shaped Ireland for the next one hundred and twenty years. Daniel O'Connell effectively organised and mobilised the Catholic majority in Ireland through the Catholic Association, leading to the Roman Catholic Emancipation Act (1829).³⁷ O'Connell's organisation, discussed below, became the genesis of the Irish nationalist movement, which became so influential in the United Kingdom Parliament and politics.

31 Ibid. Jackson, *The Two Unions*, p.138.

32 Ibid. Jackson, *The Two Unions*, p.186.

33 Bew, *Ireland*, pp.51-55.

34 Jackson, *The Two Unions*, p.18.

35 John Fitzgibbon (1748-1802) Attorney-General for Ireland (1783-1789) and Lord Chancellor of Ireland (1789-1802) and George III (1783-1820) King of Great Britain and King of Ireland (1760-1801) and King of the United Kingdom of Great Britain & Ireland (1801-1820), Prince-elector of Brunswick-Lüneburg (1760-1806), King of Hanover (1814-1820).

36 Henry Addington (1757-1844) Tory politician and Prime Minister of the United Kingdom of Great Britain & Ireland (1801-1804) and, Jackson, *The Two Unions*, p.114.

37 Daniel O'Connell (1775-1847) leader of Ireland's Catholic emancipation until 1829 movement then leader of the Repeal movement until his death.

Commonalities between the Acts of Union (1707) and Acts of Union (1800) justified and legitimised the British-Irish Union; if Scotland willingly entered the Union as a peer and equal partner of England, the logic followed that Ireland did the same. That is not borne out. There were continuities in the drivers towards both Acts of Union; a period of autonomy and acting contrary to English and British interests; a push for free trade and; a demand for national security, but the British-Irish Union lacked a high degree of consent. Irrespective of the process of bribing and pressuring Grattan's Parliament (the allegations existed ninety-four years before), the Acts of Union (1800) brought together Great Britain and a small and unrepresentative part of Ireland. The Ascendency looked to the Union to secure their place and privilege in Ireland and enhance it within the Protestant United Kingdom. The overwhelming majority of Ireland – victims of brutal repression in the Rising of 1798 – saw the Union as the ultimate brake on their emancipation and political reform, and it remained the case until 1911, where the tables turned, and the Ascendency class and its plebian supporters became the rebels against the United Kingdom.

V. Irish Nationalist and Home Rule movements

The forming, organising and maturation of mass movement Irish nationalism demonstrates the theme of precarity as the vast majority of the Irish population identified themselves with anti-Unionism. The land system in Ulster meant the province escaped the worst excesses of the Land War, hardening Ulster exceptionalism as industrialisation in Belfast gave the north-east distinctive social and economic characteristics. Throughout the nineteenth century, Tory and Liberal governments used Ireland – and were used by the Irish – to secure parliamentary majorities and quieten the noise caused by the Irish Question as once again, English and British self-interest drove British policy in Ireland. Moreover, the period also saw the politicisation of Ireland by British politicians. Although played more decisively in the period of the Orange Agitation, it was in the nineteenth-century that Randolph Churchill first ‘played the Orange card’ to appeal to a home audience with little regard to the consequences in Ireland.

The plight of Ireland's majority defined politics and culture on the island for the next century. Often holding the balance of power in the United Kingdom House of Commons, Irish nationalists also exerted significant influence over United Kingdom politics with the ‘Irish Question’ allowed to dominate in Westminster and General Elections at various points, until the December 1918 general election moved the Irish Question out of parliamentary politics and into the streets of Irish towns and cities and the fields of its counties and townlands. The vortex of the French Revolution and its effect on Ireland led to extensive sectarianism. Dissenters and Presbyterians may previously have had sympathy with Catholics – as seen in the alliance between Ulster radicals and Defenders in 1798 – but Tone's ‘Common Name of Irishman’ quickly crumbled as the Catholic faith came to define a united Irish national front and all Reformist denominations came together to secure Protestant primacy with Orangeism.

Under the leadership of O'Connell, Irish nationalism evolved from Catholic emancipation to breaking the Union. A sectional *Gesellschaft* movement, the Catholic Association, focused on securing middle-class Catholics access to the benefits of the state; admission to the Bar, the right to hold office and further education. The mass Catholic mobilisation behind the Association never stood to benefit from most relief measures directly, but through virtual representation, Catholic relief stood to benefit all. When emancipation came in 1829, it became apparent quickly that legal emancipation fell short of true equality. Protestants – a minority in Ireland but a majority across the United Kingdom – supported the Acts of Union (1800) as a bulwark to secure their continued privilege.

O'Connell formed the Loyal National Repeal Association (LNRA) in 1830 to restore Irish legislative independence *à la* 1782 under the Crown.³⁸ With the brake of the Union removed and Catholics emancipated, O'Connell and his supporters hoped for Catholic majority rule in Ireland to bring about social, economic and political reforms. An Irish national front, the LNRA marked the shift to a popular *Gemeinschaft* movement seeking cross-class political and cultural nationalism in Ireland fused with adherence to Catholicism. The LNRA contested Irish seats in General Elections from 1832 and secured nearly a third of Irish seats in 1847, wielding considerable influence in Westminster during periods of hung parliaments and minority administrations: more recently, Irish parties (albeit the Ulster Unionist Party (UUP) and Democratic Unionist Party (DUP)) held sway in the 1992-1997 and 2017-2019 parliaments.

38 The Repeal Association (also The Loyal National Repeal Association) led by Daniel O'Connell to repeal the Acts of Union (1800).

Ultimately, the LNRA split during the Great Famine of 1845-1852 as O'Connell failed to keep younger and more radical Repealers in check.³⁹ These 'Young Irelanders' grew frustrated at O'Connell's compromising and backing down in the face of threats of repression from the government.⁴⁰ This split defined the future twin factions in Irish nationalism; 'moral force' nationalism (constitutionalists) and 'physical force' nationalism (revolutionary and republican). The idealistic Young Irelanders – cultural and romantic nationalists – failed to mobilise popular support or organise effectively during the small scale 'Cabbage Patch Revolution' in July 1848, the Irish chapter of the European Revolutions of 1848.⁴¹

There followed decades of rivalry and interplay between the moral and physical force traditions. Moral force nationalists deftly used parliamentary procedure to try and secure Home Rule, unsuccessfully. Physical force nationalists produced a relatively small number of martyrs for the Pantheon of the Irish Nation. The Irish Republican Brotherhood (IRB) (colloquially 'Fenians') launched another failed Rising in 1867 – including a bombing killing twelve civilians in Clerkenwell – while the American branch launched cross-border raids on British positions in Canada from 1866-1870.⁴² In 1882 the breakaway Irish National Invincibles murdered the Chief Secretary of Ireland and the Permanent Under-Secretary in Phoenix Park, and Irish-American Fenian 'Dynamitards' planted explosives in British railway stations, on trains and in the House of Commons. Physical force nationalists – until 1916 – achieved little more than getting themselves gaoled, transported or hanged for little return. Moral force nationalists drove the nationalist agenda in Westminster.

Charles Stewart Parnell led the Home Rule League in Westminster from 1880 and the successor Irish Parliamentary Party (IPP) from 1882 until 1891 (the party split over Parnell's personal involvement in a divorce case in 1890).⁴³ Parnell led the Irish National Land League from 1879, putting land reform at the heart of Irish nationalism, setting on the 'New Departure' in 1877.⁴⁴ An ambiguous deal with the IRB, the New Departure gave Parnell effective leadership of Irish nationalism with Fenians separating their physical force campaign from the constitutional campaign for self-government; in return, Parnell agreed to campaign for land reform. From 1885, the IPP never secured less than sixty-nine of Ireland's 103 parliamentary seats when Irish cultural nationalism – the codification of Gaelic games and the Irish language – also rose and became increasingly chauvinistic.⁴⁵ With hegemony in Ireland, the IPP used their parliamentary numbers to force Home Rule on minority Liberal ministries unsuccessfully in 1886 and 1893. A pan-island Irish Unionist movement—both landed and, in the northeast, plebian – remained active and influential against the introduction of Home Rule with close, sometimes integral, links to the

39 The Great Famine (1845-1852) caused by a potato blight that led to starvation and disease in Ireland causing the depopulation of Ireland by c. twenty-five per cent including c. 1,000,000 excess deaths.

40 Young Irelanders (1842-1849) a physical force break-away group of the Repeal Association and the predecessor organisation of the Fenian Republican Brotherhood.

41 The Cabbage Patch Revolution (29 July 1848) Ballingarry, County Tipperary a small group of Young Irelanders put down by c. 50 members of the Irish Constabulary.

42 Irish Republican Brotherhood (1858-1924) insurrectionist secret Irish republican society and Irish branch on the international Fenian movement.

43 Charles Stewart Parnell (1846-1891) leader of the Home Rule League (1880-1882) and the successor Irish Parliamentary Party (1882-1891) and, Irish Parliamentary Party (1874-1922) Irish nationalist party formed by Isaac Butt to pursue Home Rule devolution and legislative autonomy for Ireland.

44 Irish National Land League (cr. 1879) a land reform and tenants rights campaign group engaged in the Irish Land War (1879-1882) for the 'Three Fs': Fair Rent, Fixity of Tenure and Free Sale.

45 Gaelic League (also known as *Conradh na Gaeilge*) (cr. 1893) to promote the Irish language, and Gaelic Athletic Association (cr. 1884) to codify and promote traditional Irish sports and athletics.

Conservative Party in Westminster. The second Bill passed the Commons, but the Lords blocked it. By the twentieth century, the IPP pushed not for Irish independence but devolution-Home Rule within the United Kingdom. Physical force nationalists, a fringe and ageing group after the Fenian Rising, strove for a republic, but many settled in America, and the Fenian movement fared better in the New World than in the Old World. The Parliament Act (1910) removed the Lords' veto, and the Liberals brought the third Bill to Parliament in 1913. With the bulwark of Union no longer guaranteeing their ascendancy, Irish Protestants, concentrated in Ulster, mobilised against Home Rule.

VI. The Orange Agitation

The Orange Agitation sees the clearest example of the British politicisation of Ireland where the 'Orange card' – first offered two decades before – brought an already heated Ulster to fever-pitch and turned the province into the crucible of a wider United Kingdom political and constitutional crisis. The mass mobilisation of Ulsterians – following the effective split from 'Southern Unionists' during the 'Ulster Revolt' in 1904 – accelerated Ulster exceptionalism as Ulsterians became so culturally and politically distinct that they laid the foundations of their separatist and revolutionary state, demonstrating constitutional exceptionalism. The extra-constitutionality of Ulsterians is the hallmark of the Orange Agitation. It deeply ingrains Ulster exceptionalism – ethnocultural and constitutional – and highlights the precarity of the Union in the period: the Union barely survived the Orange Agitation, and as a direct consequence of it, only a vestige remained within a decade.

Often referred to as the 'Home Rule Crisis', the 'Orange Agitation' took place in the nine counties of Ulster from the General Election of 1910 until the outbreak of the First World War in September 1914. Although that term is not incorrect, contemporary press and police reports used 'Orange Agitation' with its focus on organisation in and around the Ulster Unionist clubs and the Orange Order. The Home Rule Crisis better describes the United Kingdom-wide constitutional crisis caused by the Third Home Rule Bill. The Parliament Act (1910) made Irish Home Rule increasingly likely and triggered an anti-Home Rule movement with revolutionary mobilisation and militancy among the Ulsterian population.⁴⁶ Taking place almost exclusively in Ulster, the Orange Agitation demonstrates both the fracture in Irish Unionism and the development of Ulster exceptionalism that left the single pan-island movement of the nineteenth-century broken into two parts; a thinly spread and landed Irish Unionism in the south and a concentrated, well organised and cross-class but élite led, Ulster Unionism in the northeast.⁴⁷

Younger Ulsterian Conservative & Unionist MPs rebelled against the Conservative government's 'constructive unionism' policy and a perception of a too close and integrated relationship between Irish Unionists and their Conservative colleagues during the 'Ulster Revolt of 1904'. The revolt created a *de facto* Ulster Parliamentary Party (UPP) within the wider Conservative and Unionist Party. Just as in 1800 with Pitt, hardline Protestants in 1904 objected to compromises with and conciliation towards Irish Catholics that threatened their ascendancy. The rebels created the Ulster Unionist Council (UUC) to respond better to the Ulsterian 'rank-and-file' concerns – whose potential lack of support struck terror in the Ulsterian élite's hearts – and definitively shifted the anti-Home Rule movement towards an Ulster-focused campaign. Although ostensibly committed to the defeat of Home Rule across Ireland,

46 Seán Bernard Newman, "'For God, Ulster and the 'B'-men': The Ulsterian Revolution, the Foundation of Northern Ireland, and the Creation of the Ulster Special Constabulary, 1910-1927", (PhD diss., Birkbeck, University of London, 2020). Ulsterian is a demonym for the 'Protestant, Unionist and Loyalist' (PUL) community in Ulster and Newman argues, beyond value as a diacritic, that the term defines the emergence – perhaps a reaction to the rise of chauvinistic Irish national identity – of a distinctive Ulsterian ethnocultural national identity in the decades before the Orange Agitation which settled, in 1920, on exclusivist Ulsterian self-government in Northern Ireland. Newman explores the periodisation of the Irish Revolution through the mobilisation and militancy of Ulsterians during the Orange Agitation and concludes the period 1911-1914 constituted an Ulsterian Revolution, the catalyst of the wider Irish Revolution which contained two separate but inextricably linked parts: the Ulsterian Revolution and the Nationalist Revolution.

47 For a discussion on Ulster exceptionalism and a technical exploration of the constitutional proposals during the Orange Agitation and the First World War see: Seán Bernard Newman, 'Northern Ireland: a century of uncertainty', *Constitution Society Blog*, 19/11/21, available at: < <https://consoc.org.uk/northern-ireland-a-century-of-uncertainty/> >, last accessed 09/12/21.

the UUC gave Ulsterians the means to organise in their interest, while the lack of a similarly effective organisation in the south left unionists in the three provinces to wither of the vine.

No longer able to rely on the House of Lords to block Home Rule, Ulsterians mobilised themselves. On the ground, the police saw an upswing in violence between 1909-1911. Three hundred thousand Ulsterians attended a rally in Craigavon in 1911. In the same year, County Inspectors reported Ulsterian men attached to the Brunswick Clubs, Cromwell Clubs, and rifle clubs began to drill and parade with the authority of sympathetic magistrates using the same legislation the Volunteers used 130 years before to pressure for legislative independence. In September, the UUC established the separatist Ulster Provisional Government (UPG) to administer Ulster in the event of Home Rule. Hostility intensified in June 1912 with the Castledawson Affray, County Londonderry, when an Ancient Order of Hibernians (AOH) party clashed with a Protestant Sunday School group returning from a summer excursion.⁴⁸ In Belfast and across Ulster, Ulsterians forcibly expelled Catholic workers and 'Rotten Prods' from shipyards, factories and textile mills.⁴⁹ The UUC declared 28 September 1912 as 'Ulster Day' and nearly half a million – or ninety-three per cent – of Ulsterian men and women signed the Solemn League and Covenant and supporting Declaration to use 'all means which may be found necessary to defeat the present conspiracy to set up a Home Rule Parliament in Ireland.'⁵⁰

In 1913 the UUC centralised the drill and parade clubs that began to appear in 1911 and established the Ulster Volunteer Force (UVF) – unlike the clubs that magistrates dubiously sanctioned, the UVF had no legal sanction – which grew to 110,000 volunteers by 1914. Often seen as a bluff, recent research indicates the prospect of mass violence was real and although only planning to police the nationalist community, Ulsterian leaders intended to use the armed and trained UVF militarily against crown forces.⁵¹ Anne and the Whig's feared a similar mobilisation in Scotland in the 1700s, and the UIS-Defenders during the Rising of 1798 terrified the British Parliament into the Acts of Union (1800); ironically, the UVF (still maintaining their 'loyalist' credentials) prepared to use force against the crown forces of the Union to maintain the constitutional status quo. The militancy of nationalists followed in the wake of Ulsterians, with the Irish Volunteers (IV) founded later that year. Eoin MacNeill – chair of the IV's organising council – cited the militancy of Ulsterians in setting up the UVF and introducing the gun into Irish politics in the 1910s in his influential article, 'The North Began', encouraging nationalists committed to Home Rule to join the IV.⁵² Throughout 1913 the police observed – although never intervened – Ulsterians engage in skirmish drills and war games to perfect the UVF's military effectiveness for operations against the local police and the armed forces. In April 1914, the UUC funded and landed 25,000 rifles and a million rounds of ammunition to transform the UVF from a political prop into a credible military force. Despite a Royal Proclamation prohibiting arms imports to Ireland, Frederick Crawford shipped German, Austrian and Italian arms to Larne, which Volunteers quickly distributed to

48 Ancient Order of Hibernians nineteenth century Irish Catholic organisation supporting Irish nationalism.

49 'Rotten Prods' Ulster Protestants considered outside of the hegemonic Ulsterian community owing to their labour and left-wing political beliefs or support for Irish nationalism.

50 The Solemn League & Covenant and The Declaration (September 1912 (Ulster Day 28 September 1912)) pledging Ulsterian men to 'using all means which may be found necessary to defeat the present conspiracy to set up a Home Rule Parliament in Ireland' and the Declaration for women to support Ulsterian men in their covenant signed by ninety-three per cent of the adult Protestant population of Ulster (471,414 people).

51 Okan Ozseker, *Forging the Border: Donegal and Derry in Times of Revolution, 1911-1925*, (Newbridge: Irish Academic Press, 2019), p.57.

52 Eoin MacNeill, 'The North Began', *An Claidheamh Soluis*, (November 1913).

revolutionary forces across Ulster.⁵³ As the Orange Agitation moved towards its bloody denouement, the outbreak of the First World War paused hostilities for the duration.

Throughout the Orange Agitation, Ulsterians received vocal support from leading Conservative & Unionist figures, not least Tory leader Andrew Bonar Law who – like Randolph Churchill in 1886 during the First Home Rule Bill – looked ‘to play the Orange Card.’⁵⁴ Canadian with Ulster-Scots descent and committed to bringing down Asquith’s government, Bonar Law and Ulsterians formed a natural alliance. The Conservative leader encouraged Carson’s militancy and gave rousing speeches against Home Rule, notably at Balmoral near Belfast in April 1912 and at Blenheim Palace in July, blaming the Liberal government for the Orange Agitation and assuring Ulsterians of his unwavering support no matter the lengths they went to resist Home Rule. In March 1914, Bonar Law went as far as to suggest amending the Army (Annual) Act (1914) to stipulate that – months before the outbreak of the First World War – Parliament would grant supply to the armed forces for the year only if troops were not to be deployed in Ulster to suppress the anti-Home Rule movement. In the same month – and not coincidentally – the cavalry officer corp offered their resignations or would accept dismissal rather than follow orders and be deployed in Ulster to enforce Home Rule. The incident – the Curragh Mutiny – rocked the War Office and led to the dismissal of the Secretary of State for War. Bonar Law was not alone in the Conservative Party in vociferously supporting the Orange Agitation with F E Smith – later Lord Birkenhead and Lord Chancellor of the United Kingdom – nearly permanently in Ulster besides Carson during the Covenant campaign.⁵⁵ So violent and sensational was Smith’s rhetoric that it drew criticism from the Conservative Party. Attorney-General for Ireland, John Moriarty included Smith’s actions and example in a list of suspects in his report to local prosecutors advising the drawing up of treason charges under the Treason Felony Act (1848) for ‘levying war against the King.’⁵⁶ The government did not authorise the indictments and Summonses saving Smith (as well as Carson, Craig and many of the UUC leaders) from a life sentence and stripping of pensions and honours.⁵⁷

Even if Smith crossed a line, British Conservatives played the Orange card in a game to bring down the Liberal government. Sincere in parts, ultimately – as Carson came to accept after the First World War – Conservatives used Ulsterians to puff up their imperialist and patriotic credentials to the British – especially English – electorate. When Carson and Craig expected support from Conservative ministers in Lloyd George’s National Government, former friends turned their backs, having already secured the real prize, not of the maintenance of the Union, but high office.⁵⁸ Not for the last time did Conservatives use Unionism and fail to follow through on their rhetoric for their interests. As Jackson explains, it is

53 Frederick Crawford (1861-1952) organiser of the Larne gun-running and later local USC commander.

54 Andrew Bonar Law (1858-1923) Prime Minister of the United Kingdom (1922-1923) and Leader of the Conservative Party 1911-1921 and 1922-1923 and, Randolph Churchill (1849-1895) Leader of the Conservatives in the House of Commons 1886-1887 during the Salisbury ministry, and, R E Quinault, ‘Lord Randolph Churchill and Home Rule’, *Irish Historical Studies*, 22:4, (1979), 377-403, p.1.

55 F E Smith (1872-1930) (also known as Frederick Edwin Smith, 1st Earl of Birkenhead) Conservative politician and prominent Unionist and Lord High Chancellor of Great Britain (1919-1922)

56 John Moriarty (1855-1915) Attorney-General for Ireland (1913-1914) and Lord Justice of the Irish Court of Appeal (1913-1915), and, [TNA], CO 903/18, ‘Chief Secretary’s Notes, Judicial Division, Intelligence Notes, 1914’, (1912).

57 Edward Carson (1854-1935) leader of the Ulsterian movement against Home Rule (1910-1921) and variously Attorney-General for England & Wales, Leader of the Opposition and later Lord of Appeal in Ordinary and, James Craig (1871-1940) Leader of the Ulster Unionist Party and Prime Minister of Northern Ireland (1921-1940) often regarded as the organisational chief behind Carson’s charismatic leadership during the Orange Agitation.

58 David Lloyd George (1863-1945) Liberal and National Government politician and Prime Minister of the United Kingdom (1916-1922) and Leader of the Liberal Party.

wise not to take Conservative Unionism at face value:

There is, of course, another possibility. Conservative professions of support for Union may have masked, and continue to mask, the love which (at least until lately) 'dare not speak its name': Little Englandism.⁵⁹

The Orange Agitation failed to stop Irish Home Rule, but that seemed more than very unlikely from 1910. It did, however, succeed in enshrining Ulster exceptionalism in law and the United Kingdom's molten constitution to create an exclusivist Ulsterian state from the 'wreckage of union in 1921'.⁶⁰ Ulsterians exercised their veto. In April 1912, the Third Home Rule Bill proposed a devolved pan-island parliament with a United Kingdom appointed administration and reduction in Irish MPs in Westminster.⁶¹ As discussed above, Ulsterian intransigence made all-Ireland Home Rule possible only through bloody civil war. In June 1912, Liberal backbencher Thomas Agar-Robartes proposed excluding the operation of Home Rule in Counties Antrim, Armagh, Down and Londonderry; Ulster's most heavily Protestant populated counties – the first solid proposal for 'special treatment' and partition. Both the IPP and UPP rejected the partition proposals; the IPP held onto Irish unity, and the UPP maintained their opposition to any measure of Irish Home Rule. For the next two years, the Bill passed the Commons and fell in the Lords, and the provisions of the Parliament Act (1910) beckoned. By July 1914, the prospect of continental war loomed, and the United Kingdom government hoped to settle the Irish and Ulster Questions before the outbreak of hostilities. Former Liberal minister Alexander Murray, Lord Elibanks met with Asquith to propose the exclusion of the four Agar-Robartes counties, but with south Antrim and south Armagh replaced with east Donegal and north Monaghan and the place of County Tyrone unresolved.⁶² Before the meeting ended, Elibanks received news that the king had convened the Buckingham Palace Conference of the government, Irish Unionists and Irish Nationalists to find a solution.⁶³

Asquith proposed the temporary four-county exclusion, but boundaries drawn around Poor Law Unions or parliamentary constituencies. Unionists and Nationalists rejected the proposals, wanting only to use county boundaries. Asquith resubmitted his earlier proposals and suggested excluding County Tyrone for two years, followed by a county plebiscite to decide the issue. Unionists rejected the Tyrone plebiscite as the county's nationalist majority might support Home Rule against the Ulsterian population, which made up most local ratepayers. Carson then proposed the exclusion of the six 'Plantation Counties', i.e. Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, together with 'Administrative Autonomy' and majoritarian/Ulsterian control of local government. Carson and Craig made their first moves towards self-government. Including Counties Fermanagh and Tyrone was a non-starter for Nationalists.

59 Jackson, *The Two Unions*, p.179.

60 Ibid. Jackson, *The Two Unions*, p.214.

61 For detailed discussion on proposals for Ulster exclusion see: MC Rast, *Shaping Ireland's Independence: Nationalist, Unionist, and British Solutions to the Irish Question, 1909-1925*, (Basingstoke: Palgrave Macmillan, 2019), and Seán Bernard Newman, 'Northern Ireland: a century of uncertainty', *Constitution Society Blog*, 19/11/21, available at: < <https://consoc.org.uk/northern-ireland-a-century-of-uncertainty/> >, last accessed 09/12/21.

62 Herbert Henry Asquith (1852-1928) Liberal politician and Prime Minister of the United Kingdom (1908-1916).

63 George V (1865-1936) King of the United Kingdom (1910-1936).

The Conference ended without a resolution but with a possible future solution in partition. Both sides agreed to a truce for the duration of the war for the good of King and Empire. Afterwards, Craig looked to have his cake and eat it and suggested passing Home Rule followed by a general election. If the electorate returned a significant Unionist majority Parliament would repeal the legislation; a small Unionist majority would exclude Ulster's nine counties; a Liberal majority would keep the Ulster Question open. War left no time for a general election. Invoking the Parliament Act (1911) provisions, the Home Rule Bill became law as the Government of Ireland Act (1914). However, simultaneously a 'suspending' Act halted its implementation until after the war and on the assumption of amending legislation followed excluding an undefined part of Ulster for an undefined period of time. The Orange Agitation ended as the First World War began, but the Ulster and Irish Questions rolled on unanswered, and the future of the Union remained uncertain.

The Easter Rising in April 1916 re-opened the question as a third party – Irish Republicans in the physical force tradition – tried to push themselves to centre stage.⁶⁴ The prosecution of the First World War remained the government's absolute priority, and Ireland threatened not only to be an unhelpful distraction but with the prospect of German support for Republicans a soft underbelly and bridgehead for German operations against Britain. As in 1707 and 1800, national security during continental and global war focused minds on the Union. David Lloyd George convened the Irish Convention in Dublin in July 1917.

If national security provided the impetus for the Convention, Irish Nationalist anxiety at the rise of Sinn Féin – the Republican party – provided an incentive to solve the question for them too.⁶⁵ Looking to protect their flank from Sinn Féin, Nationalists proposed All-Ireland Dominion Home Rule on the Australian and Canadian models. The proposal fell as the Convention met to consider solutions based only on the Government of Ireland Act (1914). Next Southern Unionists proposed Home Rule with a Three Province House of Commons and an Ulster House of Commons with a single All-Ireland Senate. Carson and Craig reacted furiously to this display of Southern Unionist initiative; sufficiently scolded the Irish Unionist Alliance (IUA) (the Southern Unionist's organisation) fell into line with their dominant Ulsterian confreres.

Parties then delegated authority to a 'Sub-Committee of Nine'. The sub-committee recommended a scheme for All-Ireland Home Rule with an All-Ireland Parliament with forty per cent of its seats reserved for Unionists for ten years. Although all parties agreed, Nationalists modified the scheme to include fiscal autonomy and free trade with Great Britain. Unionists agreed to free trade but objected to fiscal autonomy and proposed measures that assumed the United Kingdom would soon adopt a federal constitution; it too met without agreement. Southern Unionist leader William Brodrick, Earl of Midleton brokered a compromise that looked set to be accepted by all sides; the original Sub-Committee of Nine scheme and free trade with Great Britain but the Irish administration controlling customs with excise duty subject to 'special treatment'.⁶⁶ Nationalists insisted on fiscal autonomy, and the compromise fell.

64 Easter Rising (24-29 April 1916) (also known as *Éirí Amach na Cásca*) an armed insurrection organised by physical force Irish Republicans in Dublin, but also limited skirmishes in other places in Ireland. Insurrectionist leaders declared an Irish Republic, but were defeated by United Kingdom forces and sixteen of the Republican leaders were executed.

65 Sinn Féin (founded November 1905) an Irish Republican party that became the umbrella term for physical force Republicans after the Easter Rising.

66 William Brodrick (1856-1942) Conservative and Irish Alliance politician and Leader of the Irish Unionist Alliance (1910-1919).

Finally, the leader of the Ulsterian delegation, Hugh Barrie, re-proposed the Sub-Committee of Nine scheme but with an Ulster Committee in the Parliament and a Belfast Administration; again, Ulsterians hinted at a future of self-government. The Convention ended without a resolution. As at the end of the Buckingham Palace Conference, partition remained critical in finding some future solution, and the Convention defined the six-county principle. The IPP and Irish Nationalists exited the stage as Sinn Féin grew in popular strength and wiped out their Nationalist rivals in the 1918 general election. With Nationalist constitutionalism eclipsed – and Ulsterians abandoning it years before – new solutions were needed to answer the Irish and Ulster Questions.

VII. Partition and the Government of Ireland Act (1920)

Partition illustrates the theme of English and British self-interest as previously vocal British Unionist politicians turned mute as the Acts of Union (1800) no longer served the British and Imperial interest, and Westminster looked to extricate itself from Ireland – including Ulster – quickly; the Union existed only as long as it served English and British interests and the Orange card went back into the deck. Partition demonstrates Ulster exceptionalism as Northern Ireland became a *sui generis* state with an exceptional constitutional relationship with and within the United Kingdom as statehood also allowed Ulsterians to regularise their extra-constitutional forces in the USC. Most significantly, partition demonstrates the precariousness of the Union, which effectively ended with the creation of the Irish Free State with a modified vestige lasting in Northern Ireland.

Sinn Féin's Irish landslide preceded the two-and-a-half-year Irish War of Independence – part of the Guerilla War phase of Benjamin Grob-Fitzgibbons' periodisation of the Irish Revolution.⁶⁷ Violence, reprisal, and counter reprisal between January 1919 and July 1921 plagued Ireland. The United Kingdom government – unable to impose the King's Writ – and the First Dáil – unable to move beyond guerilla and counter-intelligence operations – declared a truce and brought an end to the stalemate.⁶⁸ Ulster remained the least disturbed province throughout the period, although Belfast was the bloodiest district across the island. Ulster's peace broke down as Truce and Treaty were agreed.

During the Irish Convention, the cabinet convened a committee – chaired by former Ulsterian leader Walter Long – to frame new Home Rule legislation.⁶⁹ Long proposed the 'Federalist Draft' in June 1918 with local parliaments for England, Ireland, Scotland and Wales, and without partition in Ireland. Long – a federalist – believed Ulsterians would accept Irish Home Rule if it came hand-in-hand with English Home Rule, Scottish Home Rule and Welsh Home Rule.⁷⁰ Ulsterians maintained their strident objections and the proposals found little support outside of the Ireland Committee. Two months later, the committee suggested six-county exclusion with a 'County-by-County' option allowing each to opt-in to the Home Rule Parliament via a plebiscite after seven years. This, too, never made it out of cabinet. The Suspensory Act (1914) timed out by the end of 1919, meaning the automatic implementation of the Government of Ireland Act (1914). The committee made a further proposal for two parliaments with the nine-county option for Ulster and no plebiscites, but with a Council of Ireland to promote Irish unity and the prospect of Dominion status – the nine-county option gave Ulsterians a negligible majority increasing the likelihood of unity.

67 Benjamin Grob-Fitzgibbon, *Turning Points of the Irish Revolution: The British Government, Intelligence, and the Cost of Indifference, 1912-1921* (Basingstoke: Palgrave MacMillan, 2007).

68 Dáil Eireann (also known as Assembly of Ireland) 1919-1922 the revolutionary assembly of the Irish Republic drawn from the Irish Republicans elected in the United Kingdom general elections of 1918, 1921 and 1922.

69 Rast, *Shaping Ireland's Independence*, pp.207-215.

70 Walter Long (1854-1924) Unionist politician and Secretary of State for the Colonies and later First Lord of the Admiralty and Leader of the Irish Unionist Alliance (1906-1910).

Leading Conservative and unionist, Arthur Balfour called for a definitive All-Ireland plebiscite on the Union.⁷¹ Balfour saw no compromise between Union and Republic and took the view that Britain was better off out of Ireland by 1919. He soon changed his proposal to include six-county partition, maintaining the status quo there. Balfour argued his six-county 'small Ulster' proposals – with a settled Ulsterian majority – better supported the right to self-determination that the United Kingdom advocated for peace conferences. He argued that the nine-county 'big Ulster' proposals ran counter to self-determination without addressing the nationalist majorities in the 'small Ulster' counties of Fermanagh and Tyrone. Craig then made clear that the nine-county option was unworkable and too precarious for the tiny Ulsterian majority, and while the six- and nine-county debate continued in cabinet, the new Government of Ireland Bill came to the House of Commons in February 1920 with the six-county option.

Republicans, Nationalists – still relatively strong and well organised in Ulster – and Southern Unionists objected, each seeing the scheme as a concession to Carson. In March, the UUC accepted the Bill to repeal the Government of Ireland Act (1914), but months of internal grief and turmoil followed as Ulsterians considered the plight of fellow Covenanters in Counties Cavan, Donegal and Monaghan. The partition of Ireland meant the partition of Ulster, and the exclusion of six Ulster counties from Home Rule meant the exclusion of three Ulster counties from Northern Ireland. The Government of Ireland Act (1920) became law on 23 December and significantly altered but maintained a vestige of the Acts of Union (1800) on a partitioned island. Two years later, the Irish Free State (Agreement) Act (1922) and the Irish Free State Constitution Act (1922) ended the Union in the twenty-six counties, and Northern Ireland became one of the last remnants of a vestigial British-Irish Union.

The provisions within the Government of Ireland Act (1920) for Southern Ireland – Northern Ireland's abortive sister state – led to an uncontested election in the south and west which immediately convened itself as the 2nd Dáil of the Irish Republic. Northern Ireland exercised 'devolved' matters, with 'reserved' matters – such as policing – to follow at an appropriate time. The Imperial government-controlled 'excepted' matters; foreign policy, defence, international trade, navigation and telegraphs and currency. The government of Northern Ireland, including the cabinet, formed the executive and held the confidence of the Northern Ireland Parliament, specifically the Northern Ireland House of Commons elected using the single transferable vote method. In turn, members of the Northern Ireland House of Commons elected the Northern Ireland Senate to reflect the political make-up of the lower house. The Act included a cross-border Council of Ireland responsible for railways and diseased animals and a provision to opt-in to a united Ireland.

With its boundaries drawn to secure a Ulsterian majority, Northern Ireland soon became a majoritarian and exclusivist state. In the summer of 1920 – months before Northern Ireland received statutory approval – Craig sent Wilfrid Spender to Belfast to re-form the UVF as a security force for the anticipated state, which became the Ulster Special Constabulary (USC).⁷² Lloyd George authorised the force's establishment and recruitment in November 1920 to begin patrols in the new year. Carson resigned and transferred the leadership of the UUC to Craig in February 1921, with election to the new House of Commons held on 24 May 1921, returning a large Ulsterian majority and appointing Craig as

71 Arthur Balfour (1848-1930) Conservative politician and Prime Minister of the United Kingdom (1902-1905).

72 Wilfrid Spender (1876-1960) Ulster Unionist organiser of the UVF and USC and Cabinet Secretary to the Government of Northern Ireland and later Permanent Secretary of the Northern Irish Ministry of Finance.

Prime Minister on 7 June 1921. George V's opening of the Parliament on 22 June 1921 is often seen as Northern Ireland's constitutional birthday, but in reality, it was alive and well months before then.

Ulsterians quickly moved to consolidate power in their revolutionary state, assuming police powers in November and passing the Local Government Emergency Powers Act (Northern Ireland) (1921) to disband Nationalist controlled local authorities refusing to co-operate with the Northern Irish government. In February, Northern Ireland assumed all reserved matters except security which transferred in May. In April, the Parliament passed the Civil Authorities (Special Powers) Act (Northern Ireland) (1922) (CASPA), giving the Northern Irish Minister of Home Affairs or any other person he appointed (including police officers and Special Constables) sweeping powers to detain and intern suspects and confiscate and destroy property to support law and order. In September, the Parliament abolished proportional representation at local government elections – a measure to guarantee Nationalist representation – and introduced an Oath of Allegiance for public officials, effectively excluding Nationalists from office and the civil service. In December, Northern Ireland opted out – unsurprisingly – of provisions to bring about a single and unified Irish state. By 1925, Northern Ireland and the Irish Free State abolished the Boundary Commission tasked to redraw the partition border to accommodate minority populations along the border. In 1929, the Parliament abolished proportional representation for the House of Commons and delimited parliamentary boundaries to gerrymander constituencies to entrench the Ulsterian majority further. The vestigial Union state, Northern Ireland quickly became sectarian with its record on civil liberties and democracy discredited. However, it seemed – for Ulsterians – a fair price to pay to maintain Ulsterians' hegemonic Protestant Ascendancy within the Union, just as the Union maintained the Protestant Ascendancy 120 years earlier.

VIII. The Vestigial Union, 1921-2021

The Vestigial Union from 1921 to 1998 demonstrated a continuation of British and English self-interest to abandon the Ulster Question rather than solve it, as the Wilson government marginalised moderate parties on both sides and, showing the precarity of the Vestigial Union, drew up plans to withdraw from Northern Ireland after considering condominium with Ireland. The Wilson government saw a short breakdown – privately at least – of cross-party consensus in Westminster towards Northern Ireland, but outwardly British politics largely kept out of Northern Ireland a vice versa. The focus in this section on Sunningdale owes to the clear constitutional exceptionalism and innovation considered to solve the Ulster Question by both Heath's and Wilson's governments. The enduring constitutional exceptionalism encouraged Ulsterian extra-constitutionality as the United Kingdom separated itself from security and policing during the UWC strike and through the 'Ulsterisation' of security policy.

Ulsterians maintained their hegemony in the exclusivist and sectarian state until the creation of the Northern Ireland Civil Rights Association (NICRA) in February 1967.⁷³ In 1963, Terence O'Neill succeeded Basil Brooke, 1st Viscount Brookeborough, as Prime Minister of Northern Ireland, signalling a generational shift in Ulsterian leadership.⁷⁴ Brooke had organised the Fermanagh Vigilance Force – a model for the USC – in the autumn of 1920, resigning from his Senate seat in the first Northern Ireland parliament to command the USC before returning to serve as a hardline cabinet minister from 1933. Brooke became Northern Ireland's third Prime Minister in 1943-1963. O'Neill broke the sclerosis of Ulsterian leadership as the first post-Edwardian leader in the state's then forty-three-year history. O'Neill sought economic and industrial modernisation in the practically immiserated Northern Irish economy, coinciding with Jack Lynch's similar economic modernisation agenda in Ireland.⁷⁵ O'Neill saw sectarian tensions as a nationalist 'behavioural problem' to be changed through improved community relations without structural changes to Northern Irish society, culture and politics; nationalists only needed to understand they were not discriminated against.⁷⁶ The prime minister's highly flawed but 'constructive unionist' approach to nationalists and economic modernisation led to a thawing in relations with Ireland, causing a predictable backlash among hardline Ulsterians, not least Ian Paisley.⁷⁷ Ruptures emerged within the Ulsterian hegemony just as nationalists organised to agitate for their civil rights.

The twin pressures of internal rupture and external agitation collapsed Ulsterian hegemony and led to a hardline scramble to reassert ascendancy. The tried and tested heavy-handed approach against nationalists may have unified Ulsterians around the perennial 'constitutional question' and threat of the Other, but a younger and better-organised cohort of nationalists pushed back. Ulsterians viewed the civil rights movement through the prism of existential republican threat – considering them a front for either

73 For an account of the Stormont régime from 1921 see: Patrick Buckland, *The Factory of Grievances: Devolved Government in Northern Ireland 1921-39*, (Dublin: Gill & MacMillan, 1979), and for the background to the Recent Troubles see: Thomas Hennessey, *Northern Ireland: The Origins of the Troubles*, (Dublin: Gill & Macmillan, 2005).

74 Terence O'Neill (1914-1990) Leader of the Ulster Unionist Party and Prime Minister of Northern Ireland (1963-1969) and, Basil Brooke (1888-1973) (also known as Viscount Brookeborough) Prime Minister of Northern Ireland (1943-1963) and Leader of the Ulster Unionist Party (1946-1963)

75 Jack Lynch (1917-1999) Fianna Fáil politician and Taoiseach (1966-1973 and 1977-1979).

76 Fearghal Cochrane, *Northern Ireland: The Fragile Peace, New Edition*, (New Haven: Yale University Press, 2021), p.38.

77 Ian Paisley (1926-2014), Ulsterian politician and religious leader, founder and Leader of the Democratic Unionist Party (1971-2008) and First Minister of Northern Ireland (2007-2008).

the Papacy or Communist-Republicans intent on undermining and then overwhelming the state – and dismissed their concerns. O'Neill resigned in May 1969. In the same year, the Irish Republican Army (IRA) – physical force republicans – split. A more militant Provisional IRA (PIRA), frustrated with the Official IRA (OIRA), resorted to arms and violence broke away from the terrorist organisation.⁷⁸ Civil rights agitation spiralled into sectarian conflict and outright terrorism as Irish Republicans and Ulsterian paramilitaries, police and Crown forces confronted each other. By March 1972, the United Kingdom government usurped the Stormont régime established in 1921 and enforced direct rule for Northern Ireland from Westminster – although it did not vary the constitutional status of Northern Ireland within the vestigial Union. In 1973, constitutionalists on both sides attempted to find a settlement.

The Sunningdale Peace Process and Agreement in December 1973 attempted to restore self-government to Northern Ireland within the Vestigial Union, but with a power-sharing Northern Ireland Executive and a revived Council of Ireland (first suggested by the IUA in 1917 in the form of an All-Ireland Senate over two separate Northern and Southern Houses of Commons and later part of the Government of Ireland Act (1920)).⁷⁹ The Ulster Unionist Party (UUP), the Social Democratic and Labour Party (SDLP), the Alliance Party and the governments of the United Kingdom and Ireland agreed to the provisions of the conference. The various proposals considered at the trilateral talks demonstrated innovative ideas to solve the Ulster Question and Northern Ireland's exceptional constitutional status. Separately from the main themes explored in this paper – although considered briefly below – the conference took place in the context of the simultaneous United Kingdom and Irish accession to the European Communities (EC). Not part of the conference, the IRA set out its *Dáil Uladh* policy giving the nine counties exceptional status in a united federal Ireland; the extension to nine counties assumed a nationalist majority. None of the conference parties proposed IRA involvement in the talks, and the Irish government proved particularly hostile to any engagement with the IRA and feared any concession in Northern Ireland could lead to a possible IRA *coup d'état* in Dublin.

Importantly, the Sunningdale period coincided with incipient talks and ceasefires between United Kingdom government officials and the PIRA. In early 1972, the PIRA 'permitted' the SDLP to negotiate with the other parties.⁸⁰ Critics also accused the SDLP of holding too close a line to the Irish government and making frequent *ad limina* visits to Dublin during talks.⁸¹ The party proposed constitutional changes short of unification, including the reintroduction of proportional representation modified with weighting toward the nationalist community, a reformed Senate with an alternating community majority and a binding Bill of Rights. Whether territorial or over certain functions, various parties proposed condominium in Northern Ireland between the United Kingdom and Ireland. In late 1972 the United Kingdom government ruled that option out in the *Future of Northern Ireland* green paper but committed itself to respect the majority's will, whether Ulsterian or, in the future, nationalist. First proposed by IUA's 1917 All-Ireland Senate proposals, condominium was not a novel idea, and the SDLP and Irish government revisited condominium through 'joint-sovereignty' policing and terror

78 Irish Republican Army (also known as the IRA) 1919-1922 (also known as *Óglaigh na hÉireann*) Republican paramilitary and guerrilla force established by Dáil Éireann active during the Irish War of Independence. Later Provisional Irish Republican Army (PIRA) (founded 1969) not associated with earlier group, but appropriated the historical name.

79 Thomas Hennessey, *The First Northern Ireland Peace Process: Power-Sharing, Sunningdale and the IRA Ceasefires 1972-76*, (Basingstoke: Palgrave Macmillan, 2015), p.74.

80 Ibid. (Hennessey), pp.10-11.

81 Michael Kerr, *The Destructors: The Story of Northern Ireland's Lost Peace Process*, (Dublin: Irish Academic Press, 2011), p.263.

courts. Similarly, parties discussed the Council of Ireland idea included in the Government of Ireland Act (1920) with the SDLP forwarding plans for a National Senate of Ireland to oversee areas of mutual interest between Ireland's two jurisdictions; Senators would appoint members to a constitutional court to interpret and frame constitutional law while the United Kingdom and Irish governments would each appoint a commissioner to enable dispute resolution. Ulsterians saw the institutions as stepping stones to Irish unity.

UUP leader Brian Faulkner proposed two-tier self-government short of power-sharing.⁸² For Ulsterians, sharing power with nationalists – whom they considered an existential threat to Northern Ireland – remained anathema, but the UUP proposed SDLP politicians chairing policy-making Select Committees. The Irish government – much more willing to pool sovereignty – focused on Council of Ireland proposals and set out plans for three council levels; an executive council of ministers with members of the Northern Irish and Irish governments; a secretariat functioning as a standalone bureaucracy; and a parliamentary assembly to oversee and scrutinise the minister-to-minister council.

The United Kingdom government held a Border Poll on 8 March 1973 to reassure Ulsterians and recognise their will to remain in the United Kingdom; 57.5 per cent voted for Union, 1.2 per cent voted for Irish unity, and 41.3 per cent abstained. Elections to a new Northern Ireland Assembly took place in June. Parties met in December 1973 at Sunningdale in Berkshire to negotiate a settlement based on accepting Northern Ireland's constitutional status (accepting the prospect of the will of the majority changing in the future), encouraging North-South cooperation and, a commitment from the governments and parties to back action against terror. The Irish Constitution, not the United Kingdom constitution, proved a major sticking point as Articles 2 and 3 claimed sovereignty over the territory of Northern Ireland and was incompatible with the principle of accepting Northern Ireland's constitutional status; the Irish electorate at the time seemed unlikely to support a change in the required referendum to amend the constitution. Practical security measures – extradition, the jurisdiction of terror courts, policing and internment – were as important a feature of the talks as a constitutional settlement. The Assembly parties agreed to enter into a voluntary UUP-SDLP-Alliance power-sharing executive with a UUP majority. The negotiators also agreed to a two-level Council of Ireland with a Council of Ministers – seven Irish and seven Northern Irish ministers – and an advisory Consultative Assembly – thirty members of *Dáil Éireann* and thirty members of the Northern Ireland Assembly. The Sunningdale Agreement broke the UUP and led to another period of Ulsterian extra-constitutionality and agitation.

The Northern Ireland Assembly and power-sharing executive met and conducted business from January 1974, but the Agreement collapsed in May. With parallels with the Orange Agitation fifty-three years earlier, Anti-Agreement Ulsterians mobilised and agitated to bring down the new government. Pro-Agreement parties won a majority in the Assembly, but the UUP split over power-sharing, and only a minority supported the deal. At the February 1974 United Kingdom general election – which returned a minority Labour government led by Harold Wilson – the United Ulster Unionist Council (UUUC) Anti-Agreement Ulsterian bloc (the Democratic Unionist Party (DUP), Anti-Agreement UUP and the Vanguard Progressive Unionist Party (Vanguard)) took eleven of Northern Ireland's Westminster constituencies, forcing the remaining Pro-Agreement Ulsterians to withdraw. However, Sunningdale's

82 Brian Faulkner (1921-1977) Leader of the Ulster Unionist Party (1971-1974), Prime Minister of Northern Ireland (1971-1972) and Chief Executive of Northern Ireland (1974).

defeat came at the hands of direct action from the Ulster Workers' Council (UWC).⁸³ The militant UWC called a general strike across Northern Ireland, barricaded arterial roads and seized Northern Ireland's fuel and power supply. In overtones of the earlier 1913 UPG, a committee of the UWC dealt directly with leaders in the oil industry to manage supply and established an administrative system to ensure fuel reached essential services. While the police and Crown forces stood back to avoid confrontation and possible escalation, the UWC administered essential services in Northern Ireland and declared itself ready to form a 'provisional government.' After fourteen days of Ulsterian militancy – and inaction from the United Kingdom government – power-sharing collapsed as the remaining Pro-Agreement members of the ruptured UUP resigned.

The recently elected Labour government held less attachment to the Union than the previous Conservative administration and lacked investment in the Sunningdale Agreement. Wilson and Merlyn Merlyn-Rees pursued a policy of sidelining moderates to engage with extremists, confident that if extremists agreed to a deal, the issue was settled. The power-sharing executive demanded action from the armed forces, but when it failed to come, the ministers resigned, Sunningdale collapsed and yet again, Ulsterians', through militancy and extra-constitutionality, exercised their veto on the constitutional arrangements of the Union. The United Kingdom government quickly approached the PIRA for a ceasefire as the security situation deteriorated. The clearest examples of constitutional precarity followed. Hardline Ulsterians in Vanguard – who soon visited the Qaddafi régime in Libya to seek financial and military support – pushed the 'Ulster nationalist' option of a unilateral declaration of independence (UDI) – with strong echoes of UDI with the UPG in 1913 – and uncompromising majority rule. Ulsterians called for the re-formation of the USC and creation of a 20,000 strong 'Home Guard' – Merlyn-Rees rejected the idea of a 'third force'. Wilson quickly preferred extraction and considered the 'Doomsday Option' of granting Northern Ireland dominion status similar to Vanguard's UDI proposals. The 'Apocalyptic Note for the Record' considered the collapse of security in Northern Ireland and the province's ungovernability. In this case, Wilson expected events similar to Rhodesia's UDI in 1965 and Northern Ireland becoming a heavily sanctioned and isolated pariah state in Britain's backyard. Likewise, the Irish government in 1969 made provision for 'Exercise Armageddon'.⁸⁴ In the plan, Ireland's diminutive defence forces prepared to infiltrate critical Northern Irish infrastructure clandestinely before launching an invasion of nationalist majority border areas; Ireland's military planners accepted the exercise posed no chance of success and risked a catastrophic counter-offensive from the United Kingdom and possibly NATO. In 1974, the SDLP asked the Irish government to prepare once again to intervene.⁸⁵

In the context of a willingness to end the Vestigial Union and plan for military solutions to the Ulster Question, policymakers considered innovative constitutional options. United Kingdom civil servants visited Switzerland, Belgium and the Netherlands to research a 'cantonal model' within a Dominion of Northern Ireland. Wilson's government also considered the repartition of Northern Ireland (resecuring the Ulsterian majority through boundary changes) and 'surgical' population transfers across the new border. Conversely, it also considered the full integration of Northern Ireland into the United Kingdom with enhanced local government in Ulster. Merlyn-Rees thought the PIRA could replace the SDLP as the constitutionalist party in the republican and nationalist movement and pondered policy for the

83 Ibid. (Kerr), p.245.

84 Hennessey, *The First Northern Ireland Peace Process*, pp.228-229.

85 Kerr, *The Destructors*, p.263.

United Kingdom's 'distancing' from and ultimately breaking the Vestigial Union.⁸⁶ The PIRA prepared for an Ulsterian flight from Northern Ireland, just as the colonial settler *pied-noir* fled from Algeria after France's withdrawal in 1962. Irish foreign minister, Garrett Fitzgerald, called on the United Nations to assume trusteeship of Northern Ireland, and Dublin feared Wilson's willingness to end the Vestigial Union and withdraw all forces from Northern Ireland would lead to civil war in Ireland.⁸⁷ Liam Cosgrave's government drew up plans to conscript 20,000 troops to deploy in Northern Ireland to provide relief for nationalists while the 12,000 members of the Irish Defence Force would be used in Ireland to prevent violent unrest and a *coup d'etat*.⁸⁸ The Irish side worried that Wilson deliberately deteriorated the security situation and constructed constitutional ambiguity to make withdrawal the most palatable option in Britain.

Ultimately, another option won out and endured until 1998 with a Secretary of State governing within the Vestigial Union by direct rule with little pretence of reestablishing self-government, establishing condominium or integrating the six counties into the Vestigial Union. The United Kingdom and Irish government contracted the Anglo-Irish Agreement of 1985 that set up an administrative Anglo-Irish Intergovernmental Conference reflecting the Council of Ireland Secretariat proposed during the Sunningdale talks. Seamus Mallon dubbed The Good Friday Agreement of 1998 as 'Sunningdale for slow learners' with many of the 1974 provisions recast. The Good Friday Agreement –modified and revised by the St Andrew's Agreement (2006), the Hillsborough Agreement (2010) and the New Decade, New Approach (2020) – remains the basis of devolved government for Northern Ireland in the Vestigial Union despite many contemporary challenges to it.

86 Kerr, *The Destructors*, pp.253-319.

87 Garrett Fitzgerald (1926-2011) Fine Gael politician and Taoiseach (1981-1982 and 1982-1987).

88 Liam Cosgrave (1920-2017) Fine Gael politician and Taoiseach (1973-1977).

IX. Challenges to the Vestigial Union

History can tell us what happened in the past. History's patterns and continuities give little idea of the future; history never repeats itself, not exactly. However, it might be useful to briefly consider the five themes explored in this paper against contemporary events and challenges to the Vestigial Union. Those themes of English self-interest and English nationalism; British – mainly English – politicians' willingness to politicise the Unions and involve themselves in Irish and Northern Irish politics and involve Ireland and Northern Ireland in British politics to appeal to their home constituency; Northern Ireland's constitutional exceptionalism; Northern Ireland's constitutional precarity and changeability and; the Ulsterian willingness to resort to extra-constitutional action to secure their political ends, have evolved but hold currency today.

From within Northern Ireland, the Vestigial Union faces constitutional precarity as a long-term consequence of the Government of Ireland Act's (1920) short-term aims. Structurally, the Act's provisions pushed Northern Ireland – through the Council of Ireland – towards unity within a decade or so, but the uncompromising Ulsterian, 'not an inch' and 'what we have we hold' attitude has seen the state endure beyond its expected lifespan. However, crucial to the Four/Six/Nine County debate of 1914-1920 was Ulsterians' need to strike a balance between a state large enough to be economically and financially viable but small enough to give them a working majority at elections and in Stormont. Demographically, Northern Ireland's sectarian make-up has shifted away from an Ulsterian majority of 66 per cent over 33 per cent Catholic in 1926 to 42 per cent over 41 per cent in 2011 – the trend suggests an imminent Catholic plurality.⁸⁹ Repartitioning Northern Ireland to secure an Ulsterian majority in a smaller state is the obvious answer but is politically very difficult and contradicts a century of Ulsterian demands for respect for the majority's will. Two-thirds of Northern Irish voters polled support a future Border Poll – with 49 per cent supporting the Vestigial Union and 42 per cent supporting Irish unity – demonstrating at least a willingness to consider constitutional change.⁹⁰ Perhaps more significantly demonstrating cynicism in the continued durability of the Vestigial Union, only 37 per cent of people on either side of the border believe Northern Ireland will remain in the United Kingdom in twenty-five years against 51 per cent who do not.⁹¹

The 2017 Assembly elections gave the DUP a single-seat advantage over Sinn Féin as the nationalist parties come closer to electoral parity with the Ulsterian bloc. However, a Catholic and nationalist majority is far from guaranteeing Irish unity as social and economic issues such as the National Health Service, and the welfare state will weigh in on voters' minds if the time comes to cast a ballot at a future Border Poll – Susan McKay ably demonstrates the nuances of individuals and their views.⁹² Polling in summer 2021 also showed a shift in the Ulsterian community away from the DUP towards

89 Northern Ireland Statistics and Research Agency, '2011 Census: Religion in Northern Ireland', 01/12/14, available at: < <https://www.ninis2.nisra.gov.uk/public/census2011analysis/religion/religionCommentary.pdf> >, last accessed 24/12/21.

90 Michael and Lisa O'Carroll, 'Majority of Northern Irish voters want vote on staying in UK', *The Guardian*, 29/08/21, available at: < <https://www.theguardian.com/politics/2021/aug/29/majority-of-northern-irish-voters-want-vote-on-staying-in-uk> >, last accessed 24/12/21.

91 'NI 100: Majority believes NI will leave UK within 25 years', *BBC*, 20/04/21, available at: < <https://www.bbc.co.uk/news/uk-northern-ireland-56777985> >, last accessed 24/12/21.

92 Susan McKay, *Northern Protestants on Shifting Ground* (Newtownards: Blackstaff Press, 2021).

the anti-Good Friday Agreement Traditional Unionist Voice.⁹³ At 13 per cent the DUP polled third in the Ulsterian bloc behind the TUV's 14 per cent and UUP's 16 per cent and twelve points behind Sinn Féin's 25 per cent – this followed rioting and heightened tensions over the post-Brexit Northern Ireland protocol. The protocol and 'Sea Border' – treating Northern Ireland separately in trade to Great Britain – further demonstrates its constitutional exceptionalism.⁹⁴ The autumn poll saw the DUP recover some ground – perhaps as a result of their hard line on the protocol – up to 18 per cent over the UUP's 14 per cent and TUV's 11 per cent, but their lead is within or near the margin of error and sees the Ulsterian bloc vote fractured between pro- and anti-Good Friday parties. Of course, a turn to the TUV does not mean a return to Ulsterian extra-constitutionality, but an increase in support for the anti-Good Friday Agreement party in the current febrile political climate indicates frustration and lack of confidence with the institutions that have secured the peace in Northern Ireland for twenty-three years.

Significant challenges also confront the Vestigial Union outside of Northern Ireland. Brexit is the most obvious example. Northern Ireland voted 56 per cent to 44 per cent to Remain in the European Union (EU), with a Leave vote pushed to its slenderest of majorities by England.⁹⁵ Brexit demonstrates the effect of English nationalism on Ireland, Northern Ireland and the Vestigial Union – with Jackson, among others, arguing the greatest threat to the United Kingdom is 'English sensitivities' i.e. English nationalism, rather than 'Celtic patriotism'.⁹⁶ As discussed above, the United Kingdom and Irish accession to the EC was a key component to the Sunningdale Agreement, but the Good Friday Agreement was explicit about the role of the EU, which provided significant PEACE funding. With the Good Friday Agreement forming, in essence, a constitutional law for Northern Ireland, the deracination on the EU provisions leaves much of the agreement in limbo. More apparent, the consequent deterioration of relations between the United Kingdom and Ireland spills over into North-South and East-West relations.⁹⁷

The post-Brexit Northern Ireland Protocol is most contentious, effectively placing Northern Ireland outside of the United Kingdom's 'internal market' with custom checks on the Irish Sea.⁹⁸ Nationalist parties support the measure – within the context of opposing Brexit – to keep checks on the Irish border to a minimum. In the zero-sum game of Northern Irish politics, Nationalist support for the Protocol is often enough to raise significant Unionist objections. The measures impose checks between Northern Ireland and Great Britain and weaken the practicalities of the internal market. Unionist objections to the 'Betrayal Bill' and the 'Brexit Betrayal' sat at the centre of the 2019 United Kingdom general election campaign in Northern Ireland and are a significant factor in the ebbing of DUP polling performance since and ensuing leadership turmoil. Fearing significant losses at the scheduled May 2022 Assembly elections, the DUP took a hardline in their opposition, including withdrawing from cross-border

93 'LT NI 'Tracker' poll – Summer 2021', *LucidTalk*, 01/09/21, available at: < <https://www.lucidtalk.co.uk/single-post/lt-ni-tracker-poll-summer-2021> >, last accessed 24/12/21.

94 Lisa Claire Whitten, 'Northern Ireland: a constitutional exception and why it matters', *Constitution Society Blog*, 21/09/21, available at: < <https://consoc.org.uk/northern-ireland-a-constitutional-exception-and-why-it-matters/> >, last accessed 24/12/21.

95 'Brexit results', *The Irish Times*, 24/06/16, available at: < <https://www.irishtimes.com/news/world/brexit/results> >, last accessed 24/12/21.

96 Jackson, *The Two Unions*, p.124.

97 The most pointed example being the Tánaiste's comments on the United Kingdom's lack of trustworthiness: Harry Brent, 'Leo Varadkar tells world not to make agreements with UK government', *The Irish Post*, 13/10/21, available at: < <https://www.irishpost.com/news/leo-varadkar-tells-world-not-to-make-agreements-with-uk-government-222012> >, last accessed 24/12/21.

98 Clare Rice, 'The politics of the Northern Ireland Protocol', *Constitution Society Blog*, 06/10/21, available at: < <https://consoc.org.uk/the-politics-of-the-northern-ireland-protocol/> >.

ministerial meetings and First Minister Paul Givan threatening to resign and collapse the power-sharing executive, which he did in February 2022. The previous day, the DUP minister Edwin Poots suspended border checks in the face of legal action from a prominent Loyalist blogger. Brexit – rejected in Northern Ireland and seen as a British and predominantly English phenomenon – toppled the precarious power-sharing institutions.

The re-emergence of ‘Playing the Orange card’ is a further challenge as Conservative politicians abandon neutrality and overtly support Ulsterians and Ulsterian causes to demonstrate their British-Unionist nationalism to their mainly English constituencies. Conservative ministers run rough-shod over agreements regarding Trouble Era killings and other legacy issues to posture support for army veterans with little consideration for the consequences in Northern Ireland.⁹⁹ Defence Minister Johnny Mercer’s exit from the government (resignation/sacking) over his support for former members of the armed forces accused of Trouble Era crimes and his subsequent high profile attendance at demonstrations illustrates the willingness of some British politicians to involve themselves in Northern Irish politics as a posture for their home constituency.¹⁰⁰

The Right and the Conservatives are not alone in politicising Northern Ireland for their ends as the Corbyn-era Labour Party and its supporters took steps to stand for election in Northern Ireland. Although the party has not contested elections, some of its activists have – and been expelled – and there is now a Northern Ireland Constituency Labour Party (CLP), which is active in policy formulation and runs a ‘Representation not suppression’ campaign to gain party approval to stand in Northern Irish elections.¹⁰¹ Former Labour minister Baroness Kate Hoey – seen a fringe and eccentric figure in the Labour Party – played a high-profile role in the ‘Brexit Betrayal’ campaign. With the neutrality of Britain’s two main parties compromised, the ability of the United Kingdom to respond to issues in Northern Ireland and play the honest broker if relations deteriorate in the future is weakened considerably. Similarly, the rise of Sinn Féin in Ireland and Fianna Fáil’s electoral pact with the SDLP compromises the ability of the Irish government to act even-handedly in Northern Ireland, especially in the context of deteriorating East-West relations.

A further challenge comes from the prospect of IndyRef2 in Scotland. The paper explained above how the Acts of Union (1800) relied on the Acts of Union (1707) for justification; the Unions buttress and support each other. Notwithstanding the political fallout of Scottish independence, the constitutional challenges the Vestigial Union would face without the working example of Anglo-Scots Union looks to be significant.

99 ‘UK Government announces statute of limitations on Troubles prosecutions, including British Army soldiers’, *The Journal*, 14/07/21, available at: < <https://www.thejournal.ie/uk-government-troubles-statute-of-limitations-5495105-Jul2021/> >, last accessed at 24/12/21.

100 ‘Johnny Mercer: Tory MP resigns as defence minister’, *BBC*, 20/04/21, available at: < <https://www.bbc.co.uk/news/uk-politics-56823348> >, last accessed 24/12/21.

101 ‘Labour Party Northern Ireland: Our History’, available at: < <https://www.labourpartyeni.org/about/our-history/> >, last accessed 24/12/21.

X. Conclusion

As today, historically, the place of Northern Ireland within the Unions is precarious. Constitutional exceptionalism, British – principally English, although with IndyRef2 perhaps Scottish – self-interest, the politicisation of the still unsolved Irish and Ulster Questions by British politicians and a willingness for Ulsterians to work against and outside of the constitution to achieve their political aims are each significant factors in that precarity.

Northern Ireland, first as a part of Ireland and subsequently post-partition, has been subject to almost countless innovative constitutional proposals and arrangements; nowhere else in the United Kingdom is governed by – occasional – consociational government, or been the subject of proposals for condominium or even the complete withdrawal of functioning government. That exceptionalism may ensure flexibility in governance that allows Northern Ireland not to descend into even more regular ethnocultural violence, but it does set it apart from the rest of the Union.

A willingness for British politicians to use Ulster and Northern Ireland as a political tool to puff up, previously their imperialist credentials, and more recently, unionist and cultural nationalist credentials – and at the other end of the political spectrum anti-colonial and anti-unionist credentials – saw the Irish and then Ulster Question spill over into violence, revolution and civil war in the nineteenth and twentieth centuries and today with Brexit sees new waves of rioting and the paralysis and collapse of power-sharing. There seems to be a lack of understanding or desire to understand that the febrile politics of Northern Ireland responds very differently, and often violently, to throw away thoughtless rhetoric from the other side of the Irish Sea.

The paradox of Ulsterian unionists and loyalists behaving as separatists and rebels – when establishing provisional governments or taking up arms against the United Kingdom government – only adds to that precarity as those who most vocally support the Union and its constitution behave extra-constitutionally. Despite its volume, the vociferous loyalty of Ulsterians to the Union is contractual and conditional and at times incongruous with British unionism and often acts against the survival of the Vestigial Union. This paper has explored those historical themes and set them in rapidly changing and fluid contemporary political issues.

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