

**THE PROVENANCE AND DISSOLUTION
OF THE IRISH BOUNDARY COMMISSION**

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ABSTRACT

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The abortive saga of the Irish Boundary Commission has largely been dismissed as a minor footnote that warrants little elaboration in Ireland's partition discourse. This is unsurprising considering that its final report, having been pre-empted by an inspired newspaper forecast, was hastily suppressed so as to prevent the destabilisation of the fledgling regimes in the newly created Northern Ireland and the then Irish Free State. However, the concept of the Irish Boundary Commission derives from the intensifying controversies of Irish Home Rule and partition with specific reference to how and where a boundary was eventually drawn as well as to the creation of Northern Ireland and the Irish Free State. The Commission was legally conceived in article 12 of the controversial 1921 Anglo-Irish Treaty but confusion over its wording protracted a sequence of events that ensured that the Commission did not actually meet until almost three years later. The eventual restrictive interpretation of the article came to expose inherent flaws that were either ignored or naively underestimated when originally drafted. Furthermore, the complexities of evidence were inadequately scrutinised by a small and under-resourced panel that operated under considerable political pressure to delimit a precise line that satisfied the terms of reference. Nevertheless, the Boundary Commission served as a crucial catalyst in defining the Irish Free State's relationship with the British State and Empire as well as in entrenching the territorial framework of Northern Ireland's six counties that exists to this day.

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THE PROVENANCE AND DISSOLUTION OF THE IRISH BOUNDARY COMMISSION

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INTRODUCTION

The years 1912–1925 marked a turbulent period in Irish history whereby the political geography of Ireland was completely transformed. The period encompassed the introduction of the Third Home Rule Bill in 1912 and the signing of the 1925 Tripartite Boundary Agreement, which formally entrenched the partition of Ireland by augmenting the preceding legal instruments, specifically, the 1920 Government of Ireland Act and the 1921 Anglo-Irish Treaty. The original concept of the Irish Boundary Commission arose with regard to securing consent to the 1921 Treaty and by the time of its eventual demise in 1925 (thus facilitating the Tripartite Boundary Agreement), the Commission had served a critical but often overlooked function in shaping the formative years of Ireland’s partition into two distinct but asymmetric political entities. The very idea and existence of the Commission admitted the ever-present precept that the location of an Irish boundary was problematic but that it had not been adequately addressed since Irish Home Rule was first countenanced. As an important corollary, it was widely recognised that the Commission might be prevailed upon to recommend possibly critical alterations, under its ambiguous and cryptic brief, which could either bolster or undermine the nascent regimes in Northern Ireland and the Irish Free State and, by implication, the entire Treaty settlement. The Irish Boundary Commission itself has been largely depicted as a fleeting vignette unworthy of more detailed inquiry—one historian declaring its story as “well known and soon told” (Fanning, 1983: 90)—but it acted as a crucial catalyst in resolving a consistent undercurrent in the entire Home Rule and partition controversies concerning the location of the boundary. The origins of the Commission induced a novel political experiment whose historical obscurity has hitherto concealed a wealth of empirical material from being considered from more of a geographical perspective, and whose eventual significance lay in how the patchwork configuration of small Irish townlands came to be entwined with affairs of state.

COUNTENANCING AN IRISH BOUNDARY

The Irish Boundary Commission acted as the coda in the long but evolving debate as to how Ireland should be governed. It concluded a debate that had been punctuated by successive consideration of the principle of Irish Home Rule, the principle of partition, and the predicament of where to locate the boundary. The years 1910 and 1911 were key in determining the political framework within which Ireland was eventually partitioned. After the December general election in 1910, the Nationalist Party held the balance of power in the House of Commons, with Home Rule being widely acknowledged as the price of its support for sustaining the Liberal administration. A census was held in 1911 but the next one was not conducted until 1926.

Table 1. Percentage religious composition of Ulster counties in 1911

County	Catholic %	Protestant %
Antrim	20.5	79.5
Belfast County Borough	24.1	75.9
Down	31.6	68.4
Londonderry	41.5	58.5
Armagh	45.3	54.7
Tyrone	55.4	44.6
Londonderry County Borough	56.2	43.8
Fermanagh	56.2	43.8
Monaghan	74.7	25.3
Donegal	78.9	21.1
Cavan	81.5	18.5

Source: Census of Ireland, 1911.

Hence, many of the statistical arguments employed in the consideration of the ensuing Home Rule and partition debates were based on increasingly dated information.

In contrast to the fate of earlier attempts to introduce Irish Home Rule in 1886 and 1893, the parliamentary path for the Third Home Rule Bill was cleared with the removal of the House of Lords veto under the 1911 Parliament Act. The bill was a modest devolutionary measure for an Irish parliament that would still be subject to the supremacy of Westminster. However, it encountered virulent opposition from the earliest stage. Yet initially as far as the concept of partition was concerned there continued the bipartisan belief that Ireland, according to the doctrinaire versions of unionism and nationalism, could not be partitioned at all. The apparent deadlock elicited a partition amendment proposed by a Liberal backbencher to exclude the contiguous counties of Antrim, Armagh, Down, and Londonderry with their Protestant majorities from the scope of the bill (see table 1).¹

While the amendment proved fallow, it threw into sharp relief the potential complexities involved in attempting to delimit a single boundary line with there being no tangible precedent in principle, location, or function for partition within Ireland. The rising political temperature belied the nominal fact that the partition being envisaged would in essence delimit a new *internal* boundary of the United Kingdom, producing one subsequent territory that would experience a novel exercise in local government. Nevertheless, an important precedent was set in discussing possible partition in simplistic terms by aggregating counties rather than by countenancing the inevitably fraught delimitation of a fresh boundary on a finer territorial basis (see figure 1). The prospect of partition was almost always discussed in territorial terms rather than by reference to an actual boundary line. There was little appreciation of the ensuing practicalities of the boundary line and no consultation of boundary experts. The representation of religious demography and electoral geography was constantly

¹ For the rationale of Thomas Agar-Robartes's amendment of June 1912 see *Hansard*, House of Commons, Series 5, Volume 39, cols. 771-3 (11 June 1912).

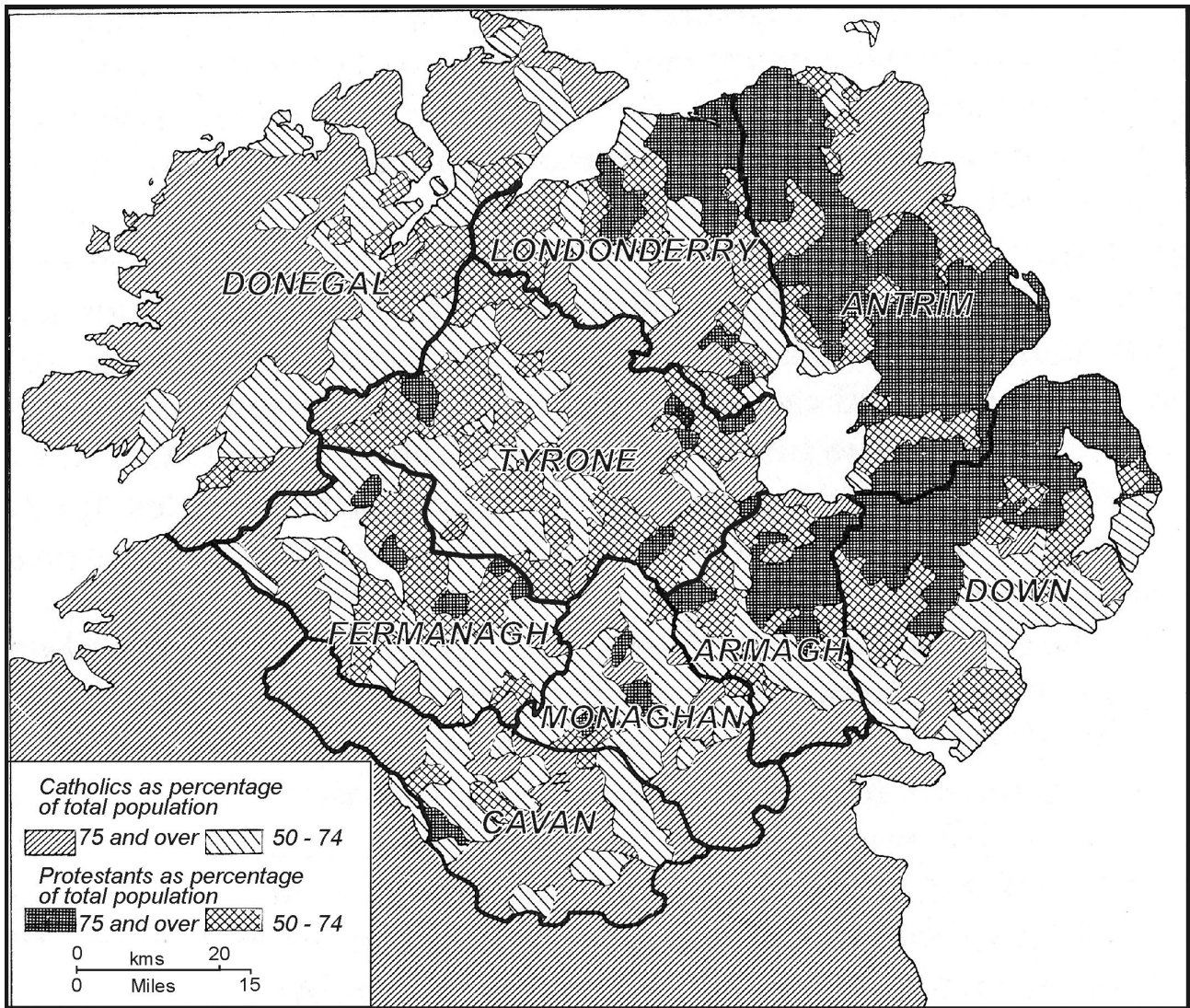


Figure 1. Distribution of Catholics and Protestants in Ulster counties by district electoral division, 1911

Sources: Census of Ireland, 1911; Davies, 1984: 81; Foster, 1988: 464.

viewed through the county lens and accordingly influenced how majorities and perceived thresholds were depicted. Greater emphasis became placed on “Ulster” as a concept with Ulster Unionist leader Edward Carson claiming that Ulster would be “a geographical and a physical fact...,”² but ambiguity perennially surrounded how “Ulster” was actually defined. The scope for conflation was wide, as at various points Ulster was interpreted as meaning Protestant and/or unionist people within nine-county Ulster as well as incorporated into the malleable concept of the “statutory Ulster” countenanced for exclusion from Home Rule.³

² *Hansard*, House of Commons, Series 5, Volume 59, col. 936 (9 March 1914).

³ The term “statutory Ulster” was coined by Prime Minister Herbert Asquith to Edward Carson in private correspondence in 1913; see H Asquith to E Carson (23 December 1913) as quoted in Colvin, 1934: 266.

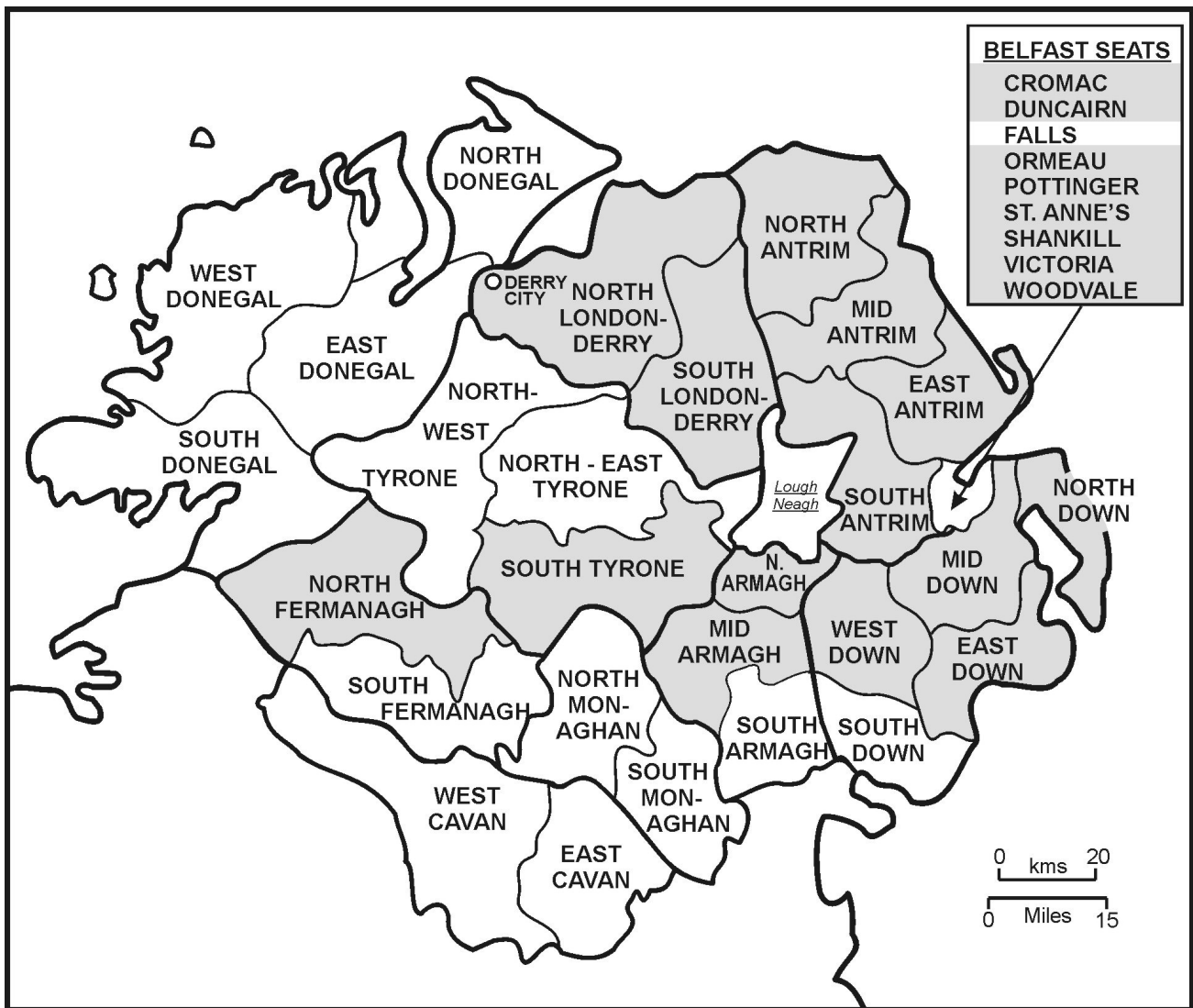


Figure 2. Unionist victories in Ulster (shaded constituencies) at the 1918 General Election

Source: Adapted from Walker, 1992: 4-9.

The Liberal government's resolve was wavering under extra-parliamentary pressures generated by the establishment of the paramilitary Ulster Volunteer Force (UVF) and fears of an impending civil war (generally known as the "Ulster Crisis"; see Stewart, 1967). It engaged in private discussions to explore the permanency and geographical extent of a new possible "statutory Ulster". Nationalists and their government allies attempted to cling to the notion of "county option" (letting each individual Ulster county opt for exclusion from Home Rule) while Unionists were now demanding a six-county block which came "with no plebiscitary determination of [a] boundary and without assurance that the demand for the exclusion of the whole nine counties of Ulster had been discarded" (Mansergh, 1991: 77).⁴ However, the

⁴ This six county block and subsequent references to "six counties" relate to the counties of Antrim, Armagh, Down, Fermanagh, Londonderry, and Tyrone that comprised the eventual Northern Ireland.

deadlock did not translate into immediate unrest as Britain's priority became transfixed on the early phases of the first world war. Partition and its boundary were kicked to touch but the countenancing of a six-county excluded entity set a precedent that was to be revisited.

The consequences of the Easter Rising in 1916 were far-reaching in marking the beginning of the eclipse of Home Rulers by separatists while David Lloyd George (later to become Prime Minister in December 1916) assumed the immediate task of finding an Irish settlement. He managed to attain assent to a six-county block being excluded but the question of its permanence was unclear and prospects for an agreement disappeared. The post-war general election in 1918 was overdue and served to refresh the political geography of nationalism and unionism in reducing the Nationalist Party to a rump of six, while Sinn Féin and the Ulster Unionists could claim success. At an all-Ireland level, Sinn Féin achieved a resounding result in winning 73 out of the 103 Irish seats, but it could not claim to represent all of Irish opinion any more than the Ulster Unionists (who won 23 out of 37 Ulster seats) could in their province (see figure 2).

CONCEIVING AN IRISH BOUNDARY COMMISSION

With Lloyd George commissioning new draft legislation for Ireland, a government committee started to explore legislative options in 1919. The committee agreed that there should be northern and southern parliaments with a "Council of Ireland" to govern matters of mutual interest and to provide a potential channel for future unity.⁵ The committee ruled out plebiscites or county option in the expectation that electoral contests were likely to inflame tensions, irreparably divide Irish opinion, and negate the prospect of Irish unity.⁶ Significantly at this stage, the committee believed that the northern area should comprise nine counties on grounds of administrative convenience and in a bid to maintain an approximate religious balance (a 7:9 ratio) between Catholics and Protestants in its population, and so minimise an ostensible religious basis for partition.⁷

Led by the advocacy of James Craig, Ulster Unionists lobbied heavily to steer the committee away from recommending a nine-county Northern Ireland. It was reported to the Cabinet that "the Ulster [sic] leaders were doubtful whether the Northern Parliament of Ireland would be able to govern... where there was a Nationalist Majority, and greatly preferred that the scheme should be limited only to the six Protestant counties."⁸ (Of course, these "Protestant" counties had Catholic majorities in the city of Derry, as well as in Fermanagh and Tyrone.) Craig would have

⁵ National Archives, Kew, London (hereafter, NA), CAB 27/68, "Conclusions of a Meeting of the Committee on Ireland" (15 October 1919).

⁶ NA, CAB 27/68, "First Report of Cabinet Committee on the Irish Question" (4 November 1919).

⁷ NA, CAB 27/68, "First Report of Cabinet Committee on the Irish Question" (4 November 1919).

⁸ NA, CAB 23/18, Cabinet Conclusions (15 December 1919).

been aware that even in the six counties, one third of the population was nationalist, as was half of its territory, and he suggested

the establishment of a Boundary Commission to examine the distribution of population *along* the borders of the whole of the six counties and to take a vote in *districts* on either side of and immediately adjoining that boundary in which there was no doubt as to whether they would prefer to be included in the Northern or the Southern Parliamentary area.⁹

It was an ingenious suggestion aimed at homogenising the Northern area by including the unionists in the forsaken counties in contiguous areas to the boundary. However, on the idea of an “immediate Boundary Commission” it was thought that “enquiries would produce unrest and the idea was not pressed”,¹⁰ and so a boundary commission would not accompany the original delimitation of the partition boundary. The perception that partition was to be a transitory phenomenon probably explains why the government did not devise the idea of a boundary commission in the first place, for, if it had intended partition to be permanent, it would be necessary to establish a boundary that closely accorded with the distribution of nationalists and unionists on the ground. Nevertheless, the government pressed ahead with a six-county arrangement as the only means of passing the legislation, with the acquiescence of the Ulster Unionists being essential to the passage of the bill (they were the only significant Irish lobby in the House of Commons as Sinn Féin had exiled themselves). Ulster Unionists had performed the catharsis of jettisoning fellow Ulster Unionists in Donegal, Monaghan, and Cavan in the rationalisation that a six-county partition struck the optimum balance in maximising territory they felt they could control. The eventual Government of Ireland Act was enacted in December 1920 but unconventionally, in comparison to other boundary instruments, the boundary could only be inferred from a territorial definition. It stated that

Northern Ireland shall consist of the parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry, and Southern Ireland shall consist of so much of Ireland as is not comprised within the said parliamentary counties and boroughs.¹¹

As an exercise in boundary making, the Irish example had little semblance of democratic credibility and departed from the recent precedents with which Britain was involved in post-war Europe. Either side of the new boundary, the respective new minorities were substantially different in terms of the religious balance of the population, with Catholics comprising approximately one-third of the population of the new Northern Ireland and Protestants one-tenth of Southern Ireland. However, it was abundantly clear that any devolutionary arrangement would fail to satiate nationalist demands in the South so this instilled an imperative in the British to facilitate and

⁹ NA, CAB 23/18, Cabinet Conclusions (15 December 1919). Emphasis added.

¹⁰ NA, CAB 23/18, Cabinet Conclusions (19 December 1919).

¹¹ Government of Ireland Act 1920, Section 1 Clause 2. (10 & 11 Geo. V c. 67). Such a definition was to create some legal headaches, especially with regard to the extent of parliamentary counties into territorial waters.

execute it in the North. In effect, the new Government of Ireland Act was a “Government of Northern Ireland Act” as hostilities (mostly confined to the 26 counties of the South) escalated between British forces and the militant branch of Sinn Féin, the Irish Republican Army.

Elections to the new parliaments in May 1921 reflected the political polarity. Every Sinn Féin candidate was returned unopposed in the South (and the party proceeded to reconvene its own parliament—Dáil Éireann) while the Northern elections were contested under proportional representation where all 40 Unionist candidates were elected anyway, with Sinn Féin and Nationalists winning just six seats each. As Northern Ireland was now rapidly constituting a *fait accompli* with functioning devolved government and institutions, there emerged a quandary for nationalists whereby they had to deal with a boundary they had not wanted at all. The implicit weakness that nationalists had difficulty acknowledging was that, in decrying the injustice of the newly imposed boundary, they were compelled to consider drawing it somewhere else, with the potential liability that a fairer boundary would be more enduring. Furthermore, Ulster Unionists were now in a dominant tactical position whereby they had been awarded an advantageous territorial settlement and the likely incumbency of governmental machinery to entrench and insure against any substantial change to the boundary.

Following a negotiated truce in hostilities, direct negotiations between the British Government and Sinn Féin representatives were enjoined in London in October 1921. The Irish delegation (headed by Arthur Griffith and Michael Collins) had still not been furnished with an explicit Ulster policy as the talks began. It was left to the delegates to improvise a critique of partition. Collins emphasised its unfair geography to Lloyd George: “You and Northern Ireland are faced with the coercion of one-third of its area. Tyrone and Fermanagh, more than half Armagh, a great deal of Derry and a strip of Antrim will go with the authority they prefer” (Jones, 1971: 129). Debate had later progressed onto the unit for a putative plebiscite, ranging from parliamentary constituency, to poor law union, to nine-county Ulster, with Lloyd George proceeding in vain to tempt the Irish by asking whether they would accept a single province-wide plebiscite. It was apparent that the British Government was anxious to avoid any breakdown of talks on partition because more satisfactory headway was being made on the parallel issues of status, trade, and defence. Private external appeals to Craig, as Prime Minister of Northern Ireland, to be more accommodating evaporated on his intransigence in compromising his existing powers. Lloyd George clutched at a final straw to save the talks:

There is just one other possible way out. I want to find out from Griffith and Collins if they will support me on it; namely that the 26 Counties should take their own Dominion Parliament and have a Boundary Commission, that Ulster [i.e Northern Ireland] should have her present powers plus representation in the Imperial Parliament plus the burdens of taxation which we bear. I might be able to put that through if Sinn Fein will take it (Jones, 1971: 155).

It is possible that a Boundary Commission panacea was inspired by Versailles examples but, while it had been mooted in a different context (remarkably, on Craig’s

suggestion) in late 1919, it would be a novel and unfamiliar concept for the Irish delegation to consider. On learning that Lloyd George would deploy a Commission as a means to portray Northern Ireland as unreasonable if it refused it, Griffith portentously remarked “We would prefer a plebiscite, but in essentials a Boundary Commission is very much the same. It would have to be not for Tyrone and Fermanagh only but for the Six Counties” (Jones, 1971: 157). Griffith reported to Dublin that it would be “a Boundary Commission to delimit the six-county area... so as to give us the districts in which we are a majority.”¹² However, the overall thrust of the Boundary Commission idea at this stage was as a tactical device to flush out the North’s obduracy by exposing its intent to “coerce areas anxious to come under the South” (Pakenham, 1992: 170). Originally, Griffith made it clear that that he conceived the Commission as a punitive territorial instrument against the North only and so precipitate the end of partition. Nevertheless, he approved the following memorandum drafted by the British:

If Ulster did not see her way to accept immediately the principle of a Parliament of all Ireland ... she would continue to exercise through her own Parliament all her present rights; she would continue to be represented in the British Parliament ... In this case, however, it would be necessary to revise the boundary of Northern Ireland. *This might be done by a Boundary Commission which would be directed to adjust the line, both by inclusion and exclusion, so as to make the boundary conform as closely as possible to the wishes of the population.*¹³

Griffith’s assent was significant in that it stipulated that the Commission would “adjust” the original six-county boundary on a two-way basis on the sole criterion of the “wishes of the population.” It represented an important progression from a Commission that would specifically “delimit” the six-county entity.¹⁴ The memorandum was adjusted in the subsequent draft treaty but it still confirmed that the sole criterion for boundary change would be “the wishes of the inhabitants”.¹⁵ The clause read: “a Commission shall be appointed to determine in accordance with the wishes of the inhabitants the boundaries between Northern Ireland and the rest of Ireland, and for the purposes of the Government of Ireland Act, 1920 the boundary of Northern Ireland shall be such as may be determined by such Commission.”¹⁶ Crucially, the draft was again revised at the end of the month but the boundary article was significantly altered to the Irish delegation’s detriment with a selectively inserted qualifying clause clearly inspired by the Treaty of Versailles:

¹² National Archives of Ireland, Dublin (hereafter, NAI), DE 2/304/8, A Griffith to E de Valera (9 November 1921).

¹³ House of Lords Records Office, London, Lloyd George Papers, F/181/4/1/218, Memorandum (13 November 1921); emphasis added.

¹⁴ NAI, DE 2/304/8, A Griffith to E de Valera (8 November 1921). Griffith uses word “delimit” again in referring to “a Boundary Commission to be set up to delimit the area.” See NAI, DE 2/304/8, A Griffith to E de Valera (12 November 1921).

¹⁵ NAI, DE 2/304/1, T Jones to A Griffith, “Tentative suggestions for a Treaty” (16 November 1921); see article 11, paragraph 2.

¹⁶ NAI, DE 2/304/1, T Jones to A Griffith, “Tentative suggestions for a Treaty” (16 November 1921); see article 11, paragraph 2.

a Commission shall be appointed by the British Government to determine in accordance with the wishes of the inhabitants, *so far as may be compatible with economic and geographic conditions* the boundaries between Northern Ireland and the rest of Ireland and for the purposes of the Government of Ireland Act, 1920, and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission.¹⁷

The new draft undoubtedly induced Griffith to examine it more closely but it appears that the only product of his scrutiny was a note to suggest that the Commission be composed of three commissioners, one from the South, one from the North, and a Chairman nominated by the British. One can argue that this placed inordinate faith in the casting vote of a British-appointed chairman supporting the radical territorial transfers on the scale Griffith was anticipating. An aide's recollection states that Griffith was made aware of the dangerous ambiguity in the clause:

I pointed out to him that I considered that the clause was too vague and that it left too much power to the Boundary Commission. I suggested that some unit (such as a Barony or Electoral Division) should be specified, that a vote should be taken in such a unit and that the unit should automatically come to us or stay in the North according to the majority of the votes. He immediately saw the point, but said he did not know whether it would be possible at that stage to have the clause altered. In fact it was not altered (Colum, 1959: 295-6).¹⁸

Collins had raised his own concerns with Lloyd George and recorded that "we would save Tyrone and Fermanagh, parts of Derry, Armagh and Down by the Boundary Commission."¹⁹ The upshot was that Collins was left with an impression, not incorporated into a written agreement, that the Boundary Commission would deliver vast territorial tracts to the South and that the North would be compelled by economic forces to sue for unity. This latter point was based on a great misconception as it was a fallacy to assume that sheer physical size would dictate the economic viability of the North, as it was not a separate state but part of the United Kingdom, whose exchequer was the ultimate guarantor of its viability. With Griffith having originally assented to the Boundary Commission concept, all partition pretexts to collapse the negotiations were extinguished. Lloyd George compounded the pressure on the other Irish delegates with a dramatic warning of a return to hostilities, and so the momentous Anglo-Irish Treaty was signed on 6 December 1921 that paved the establishment of a new British Dominion, the Irish Free State. The final Boundary Commission proviso was contained within article 12:

¹⁷ NAI, DE 2/304/1, D Lloyd George to A Griffith (30 November 1921). Emphasis added to new qualifying clause. Article 88, Annex 5 of the Treaty of Versailles relates to how in Upper Silesia "regard will be paid to the wishes of the inhabitants as shown by the vote, and to the geographical and economic conditions of the locality." The Versailles Treaty catered for the meticulous conduct of plebiscites by "communes." The "as shown by the vote" condition is clearly excised for the Irish adaptation. See history.acusd.edu/gen/text/versaillestreaty/ver031.html [25-09-2006] for "Political Clauses for Europe" of the Treaty of Versailles.

¹⁸ The aide was John O'Byrne, future Attorney-General of the Irish Free State.

¹⁹ NAI, DE 2/304/1, Memorandum of interview between M Collins and D Lloyd George (5 December 1921).

a Commission consisting of three Persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland and one who shall be Chairman to be appointed by the British Government shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions, the boundaries between Northern Ireland and the rest of Ireland, and for the purposes of the Government of Ireland Act, 1920, and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission.²⁰

The wording offered extensive scope for interpretation. Considering its fundamental importance in concluding the signing of the Treaty settlement, even the untrained legal eye could find an amazing degree of ambiguity in a legal and official agreement of such standing. One can attribute the flaws of article 12 to an inadequate appreciation of the concept of geographical scale that permeates every significant word and phrase it contains. It begged fundamental questions. Who and where were the inhabitants? At what scale would economic and geographical conditions be applied and what threshold would apply when considering the wishes of the inhabitants? It remains a matter of conjecture whether article 12 was deliberately ambiguous or simply casually drafted. The subjectivity even extended as to when the Commission would actually meet and what resources it would require. Only after the Treaty was signed did the interpretation and wording of article 12 attract the diligent but belated scrutiny that was strangely absent when it was being formulated and agreed.

FORESTALLING THE IRISH BOUNDARY COMMISSION

As an excluded onlooker to the Treaty, Craig was immediately perturbed by the prospect of a Boundary Commission that could critically curtail Northern Ireland's territory but he elicited assurances from Lloyd George that "mere rectifications of the Boundary are involved, with give and take on both sides."²¹ Reactions to the Boundary Commission were generally muted in the South but were probably conditioned by the negative reactions to the Treaty expressed by Unionists in the North, thus inoculating article 12 from any significant nationalist criticism. The British Government's line in public was consistently non-committal over the likely results of a commission but allusions were made to the reciprocal character of the undertaking. Lloyd George led the defence of the Boundary Commission clause by outlining the circumstances with which it was specifically meant to address:

Take it either by constituency or by Poor Law unions, or, if you like, by counting heads, and you will find that the majority in these two counties [Fermanagh and Tyrone] prefer to be with their Southern neighbours ... you should have a re-adjustment of boundaries, not for the six counties, but a re-adjustment of the boundaries of the

²⁰ NAI, DE 2/304/1, "Final Text of the Articles of Agreement for a Treaty" (6 December 1921).

²¹ Public Record Office of Northern Ireland, Belfast (hereafter, PRONI), D1415/B/38, Lady Craigavon's Diary (entry of 9 December 1921). On the very day the treaty was signed Lloyd George revealed to his Cabinet that "for the first time Irish extremists had accepted Ulster's right to opt out of a united Ireland and that a boundary commission might give the north more than she would lose"; see Laffan, 1983: 90.

North of Ireland which would take into account where there are homogeneous populations of the same kind as that which is in Ulster, and where there are homogeneous populations of the same kind as you have in the South. If you get a homogeneous area you must, however, take into account geographical and economic considerations.²²

Regardless of expressed concerns about the potentially unpredictable conclusions of the Boundary Commission, the Treaty was comfortably approved in the House of Commons within a few days. While Dáil Éireann would continue into the New Year before reaching a vote, the Commission failed to arouse general interest or emotions. The acquiescence in the Boundary Commission was a reflection of a latent fear that drawing attention to it would actually expose its flaws or inadequacies in formulating an alternative. With partition otherwise largely ignored, the Dáil proceeded to approve the Treaty by 64 votes to 57.

Collins, now Chairman of the Provisional Government of the Irish Free State, and Craig met on 21 January. To general surprise they drafted an agreement, called the Craig-Collins Pact, which committed the Free State and Northern Ireland to appoint one representative each to report to Collins and Craig, who would then mutually agree the future boundaries between the two entities.²³ It was agreed, in Collins's words, "that we ourselves could deal with the question of the boundaries without help or interference from any British authority."²⁴ Northern border nationalists feared the pact would endow the North with a veto on territorial changes without them being consulted. At a supplementary meeting, it eventually transpired that Collins and Craig had extremely divergent views of what had been agreed, as the actual geography of the situation had not been explicitly explored. The surprise was that their contrasting viewpoints on the Commission, derived from what both men had been led to assume from Lloyd George, had not manifested itself earlier. Craig went on record to say that Collins had shown him a map implying that the latter had already been promised "almost half of Northern Ireland, including the counties of Fermanagh and Tyrone, large parts of Antrim and Down, Derry city and Enniskillen and Newry."²⁵

Entreaties for clarification from Government ministers in the House of Commons garnered tantalising replies that were sufficiently reassuring not to endanger the Treaty settlement. However, elaboration of article 12's meaning was contained in a private communication from the Lord Chancellor that sought to clarify its restrictive geographical scale. Lord Birkenhead cited a legal precedent in justifying the semantics of the article and assured that had sweeping territorial changes been contemplated, the article would have been altered accordingly:

²² *Hansard*, House of Commons, Series 5, Volume 149, col. 41 (14 December 1921).

²³ NAI, DT S1801A, "The Collins-Craig agreement" (23 January 1922).

²⁴ NAI, G1/1, Provisional Government Minutes (23 January 1922).

²⁵ *Irish Independent*, 4 February 1922.

assuming that it was intended that a Commission should operate which might conceivably wholly change the character of Northern Ireland by enormous reductions of its territory, I think it would have been necessary to say: "A Commission shall determine in accordance with the wishes of the inhabitants, etc., what portions of Ireland shall be included in the Irish Free State and what portions shall be included in Northern Ireland, and shall fix the boundary between the portions thus allotted". ... I have no doubt that the Tribunal, not being presided over by a lunatic, will take a rational view of the limits of its own jurisdiction and will reach a rational conclusion.²⁶

Simmering tensions between North and South precipitated only one significant boundary incident in the "Belleek Triangle" of west Fermanagh, when an incursion by Free State forces elicited a disproportionate response from the British Army to expel them and to impose a local buffer zone. Free State concerns were also to extend to Craig's local government reforms removing proportional representation and reconfiguring council areas. The Boundary Commission was certainly a consideration in Craig's wish to expedite them and so maximise Unionist representation in border areas and especially subvert the central nationalist claim of controlling Tyrone and Fermanagh county councils. Collins was to complain in vain to Churchill in August 1922 that it was "beyond question intended to paint the counties of Tyrone and Fermanagh with a deep orange tint in anticipation of the operation of ... the Boundary Commission, and so, to try to defraud these people of the benefits of the Treaty."²⁷ Collins' death days later removed the only leader in the Provisional Government who had consistently made partition and the plight of the northern nationalists a proactive concern. As a consequence, the Free State had little option but to adopt a passive northern policy under the new leadership of WT Cosgrave and place its trust in the full execution of the Boundary Commission. However, the Commission was no nearer being realised as the Free State had already plunged into a debilitating civil war that would be likely to deter international opinion from supporting their case, and even if the Commission was to meet, the possibility of an adverse decision would embolden anti-Treatyite elements. Under pressure to address the seemingly static boundary question from both Northern nationalists and Dáil representatives, the Provisional Government saw fit to establish a North Eastern Boundary Bureau (NEBB) to monitor Northern affairs, liaise with local nationalists, and act as a propaganda and research body in anticipation of the Boundary Commission.

A NEBB memorandum prepared for the Irish Free State Cabinet in May 1923 outlined "maximum" and "minimum" territorial claims that could be made to the Boundary Commission.²⁸ The "Maximum Line" represented the territory expected under the Boundary Commission based solely on the wishes of the inhabitants. The "Minimum Line"—"the minimum claim of the Free State beyond which they could not

²⁶ Lord Birkenhead to A Balfour (3 March 1922) as quoted in *The Times*, 8 September 1924.

²⁷ M Collins to W Churchill (9 August 1922) as quoted in Gilbert, 1977: 744.

²⁸ University College Dublin Archives, Dublin, Mulcahy Papers, P7/B/288, "Memorandum" authored by K O'Shiel (17 May 1923).

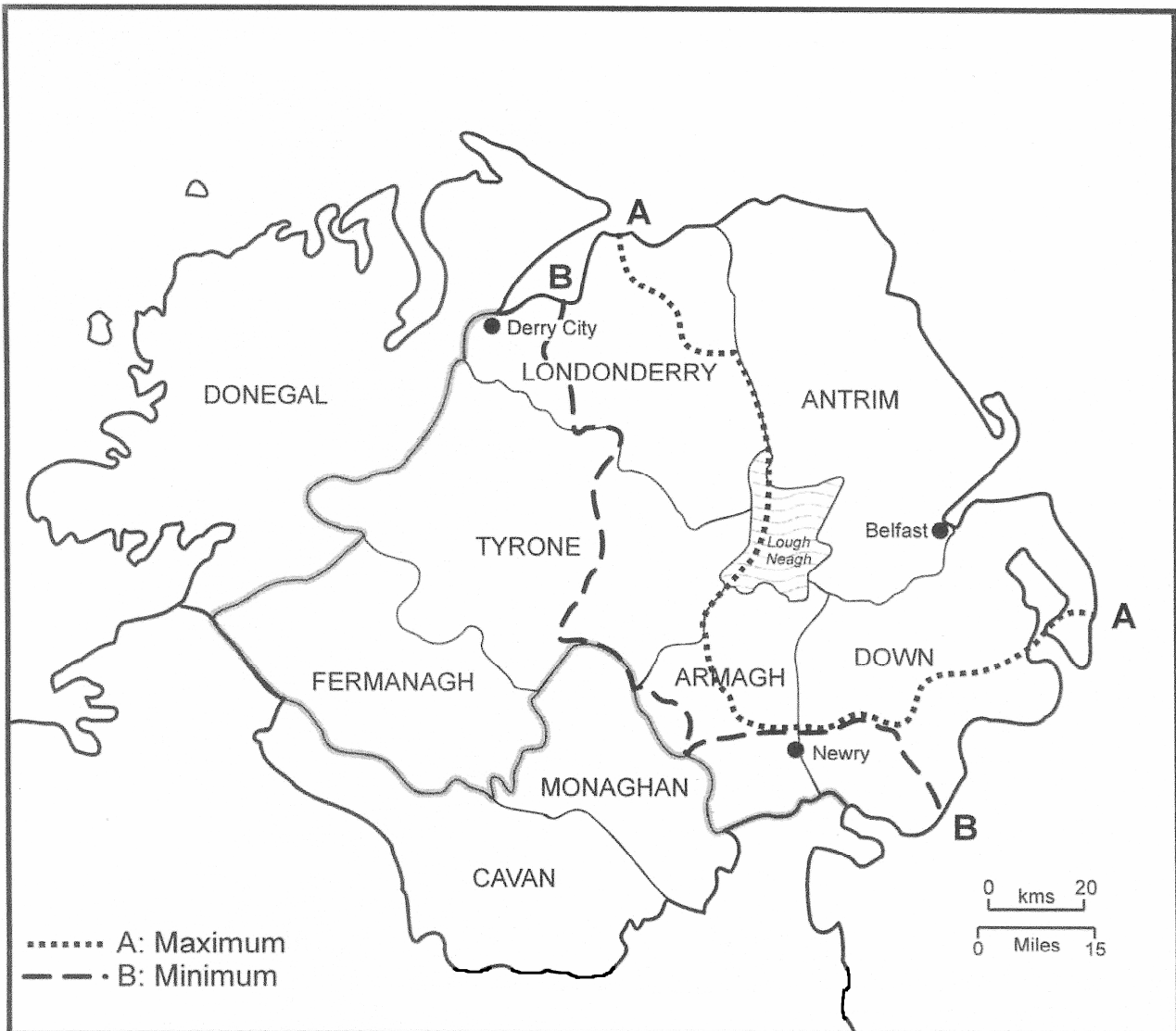


Figure 3. North Eastern Boundary Bureau recommendations as to “Maximum” and “Minimum” territorial claims to be made under article 12

Source: University College Dublin Archives, Dublin, Mulcahy Papers, P7/B/288, “Memorandum” authored by K O’Shiel (17 May 1923).

recede”²⁹—accounted for the three considerations stipulated in article 12: the wishes of the inhabitants as well as geographic and economic considerations. Both lines would have rendered the existing six-county entity of Northern Ireland unrecognisable (see figure 3).

Yet, the passage of time was ensuring that the boundary was being entrenched. While its position was still to be finalised, its functional dimension had actually been underscored by the Free State with its imposition of a customs barrier in April 1923. From the Free State perspective, it had a treble effect and intent in raising revenue for the exchequer, symbolically asserting its independence, and, akin to the Belfast Boycott three years earlier, applying economic pressure on the Northern administration. The imposition of tariffs seemed a counter-productive policy, out of kilter with

²⁹ NAI, G 2/2, Irish Free State Executive Council Minutes (5 June 1923).

the Free State's aspiration to abolish partition. That it preceded the Boundary Commission deliberations was remarkable, and an anomalous example of a phase of boundary administration actually predating final boundary delimitation.³⁰

Once the civil war had ended, the Free State indicated that it was addressing the Northern situation by appointing education minister Eoin MacNeill as its representative on the Commission. MacNeill satisfied the criteria of being a minister, Catholic, and a Northerner but it appears that he had only accepted nomination "because no one else could be found to act instead of me" (Hand, 1973: 169). It was little discussed at the time whether a full-time minister could devote the necessary time to fulfil the burdensome nature of a commissioner's duties. The British Government was still keen to broker an agreement that would obviate the Commission but all new initiatives proved abortive with Cosgrave's deputy, Kevin O'Higgins, counselling that "no Irish Government could face the people having given away the Boundary Commission unless the North agreed to return to the position which existed before they opted out."³¹

Britain had entered a period of political instability and successive governments were reluctant to traverse Irish controversies again. Nevertheless, the Northern Government possessed a significant power for delay. Article 12 stipulated that it was to appoint its own commissioner but there was no provision catering for its refusal to do so—a *casus improvisus*. The British Government, now a minority Labour administration, publicly announced that the Commission would proceed and unsuccessfully invited the Government of Northern Ireland to appoint its representative.³² In response, the British Government decided to refer the matter to the Judicial Committee of the Privy Council, specifically to deal with the question of the British Government appointing a representative on Northern Ireland's behalf. The upshot of the Committee's deliberations was that there was no power in the Treaty to compel the North to appoint a representative and the British Government was not entitled to appoint one by default nor could the Commission function in the Northern commissioner's absence. Furthermore, while authorising the British Government to appoint a representative for Northern Ireland by amending legislation, the Judicial Committee advised that, on the question of "unanimity" within the Commission, the decision of the majority would rule (Hand, 1973: 224-6; Gwynn, 1950: 227). Having to enact further legislation was fraught with potential risks as it was feared "Cosgrave's opponents would say that if the British Parliament could alter the Treaty, so could the Irish Free State" (Jones, 1971: 233-4).

In order to expedite matters, the British Government had announced the appointment of Richard Feetham of the South African Supreme Court as Chairman of the

³⁰ For elaboration on classified phases of boundary making process see Jones, 1945: 5.

³¹ NAI, DT S1801D, "Rough notes by Diarmuid O'Hegarty on the conference held to discuss the forthcoming meeting held in London on the Boundary Question" (28 January 1924).

³² PRONI, CAB 4/112/12, Cabinet Conclusions (5 May 1924).

Boundary Commission on 5 June 1924 but he was not the original first choice.³³ He was seen as being competent to deal with the legal demands of the task, as well as coming from an overseas British Dominion and thus being seen to bring a necessary impartiality to a politically sensitive post. Feetham's appointment did not arouse any substantial dissent from Free State quarters but there were grounds for believing that the Commission would not be the potentially radical instrument some had envisaged. Winston Churchill, now out of office, was informed by a civil servant that "it will now rest with a Commission on which we are to appoint two out of three. The casting vote will rest with the Chairman. Let me say at once that Feetham has not given me or anyone the slightest indication of the working of his mind. ... But Feetham is a chairman of exactly the kind you contemplated."³⁴ Even so, a campaign was being privately orchestrated to lend a restrictive interpretation of article 12. Churchill, who was now angling for a return back to the Unionist Party, recommended the release of Lord Birkenhead's letter of March 1922 to the press, which had assured that there was no danger that the Boundary Commission would make drastic alterations in the boundary.³⁵ The timing was deliberate as both the British and Free State Governments were introducing the legislation to enable the British Government to appoint a commissioner on Northern Ireland's behalf. It was clear that the new legislation did not arouse any enthusiasm in Westminster. Withering criticism of article 12 was most telling from the imperial administrator, Lord Curzon, with his vast experience of boundary making. His words elucidated the difficulties:

I have always felt that the first condition of the success of such Commissions was to define in precise language the duty which they were called upon to discharge... How are you to determine the wishes of the inhabitants? What machinery are you to set up? and so on. Geographic and economic conditions—how are they to be appraised and ascertained? ...now that we know that the Irish Free State is to be represented by a strong partisan on that side, and that the Government have stated their desire to appoint somebody with equally strong Ulster propensities on the other side, think what burden that casts upon the unhappy man who is going to be Chairman.... you are placing upon the shoulders of that eminent man a responsibility that any human being might shrink from bearing...³⁶

After the passage of enabling legislation, the Commission's membership was finally completed on 24 October 1924 with the appointment by the British Government of Joseph Fisher as representative for Northern Ireland. Unsurprisingly, official Northern policy was not to cooperate with the Commission, although there is clear evidence that Fisher's appointment met with Craig's unofficial approval.³⁷ A Belfast barrister and former editor of the unionist *Northern Whig* newspaper, Fisher had in 1922 advised James Craig to adopt a more radical stance on the Boundary Com-

³³ The British Government had initially approached Robert Borden, formerly Prime Minister of Canada, but he declined the invitation, citing Northern Ireland's unwillingness to participate; see Hand, 1969: x.

³⁴ L Curtis to W Churchill (19 August 1924) as quoted in Lavin, 1995: 223.

³⁵ Lord Birkenhead to A Balfour (3 March 1922) as quoted in *The Times*, 8 September 1924.

³⁶ See *Hansard*, House of Lords, Series 5, Volume 59, cols. 653-4 and 662-3 (8 October 1924).

³⁷ PRONI, CAB 4/129/20, Cabinet Conclusions (10 November 1924).

mission that appeared to expound markedly on Craig's thinking to simplify the course of the boundary when a boundary commission idea was mooted in late 1919:

We *ought* to bear *our* share of the burden of congestion and misery, and Ulster can never be complete without Donegal. Donegal belongs to Derry, and Derry to Donegal. With North Monaghan *in* Ulster and South Armagh *out*, we should have a solid ethnographic frontier to the South, and a hostile "Afghanistan" on our north-west frontier would be placed in safe keeping. A Southern frontier from the end of Lough Erne to Bessbrook or thereabouts would be ideal; it would take in a fair share of the people we want and leave out those we don't want (Ervine, 1949: 481-2; original emphasis).

ACTUATING THE IRISH BOUNDARY COMMISSION

It was almost three years after the signing of the Treaty that the Boundary Commission held its first meeting in London on 6 November 1924.³⁸ The Commission immediately agreed to postpone any discussion of principles until it had heard evidence from all sides, thereby avoiding an initial deadlock. The commissioners also agreed to maintain strict secrecy about their deliberations (Hand, 1973: 232). The Commission invited the three governments to make legal representations but while the Free State was willing to do so, the British Government declined, and the Northern government refused. The bulk of the Free State case before the Commission centred on how the "wishes of the inhabitants" should be ascertained. Counsel for the Free State stressed the necessity of plebiscites but faced a growing welter of counter arguments from Feetham that suggested that such "wishes" could be garnered from previous elections, census returns, or by consulting local representatives. Feetham's alternatives would be objectionable to the Free State on account of election results having just been produced from reconfigured electoral areas and the last census having been published as far back as 1911.³⁹

Other pessimistic insights by nationalists into how Feetham was thinking could be gleaned from the Commission's preliminary tour of the boundary in December, which was aimed at sampling opinion and gathering preliminary evidence. The tour commenced in Armagh, then travelled to Enniskillen, Newtown Stewart, and Derry city before returning to London, via Dublin. TJS Harbinson, Nationalist MP for North-East Tyrone questioned why the Commission had not ventured far from the existing boundary (e.g. to East Tyrone) with the inference that only adjacent boundary areas were under consideration (Hand, 1973: 234). Following its preliminary tour, the Commission retreated to initially collate and assess the written submissions it had solicited. From March to July 1925, the Commission held formal hearings in Northern Ireland to hear oral evidence from public bodies and delegations of local citi-

³⁸ The Commission secretariat was of modest size. FB Bourdillon served as secretary, CJ MacPherson as assistant secretary, RA Boger as chief technical assistant, C Beetstecher as Feetham's private secretary, and A Marshall as shorthand writer.

³⁹ For a transcript of the clash of arguments see Irish Boundary Commission, 1969: Appendix I, 22-41.

zens. The entire range of evidence received by the Commission varied greatly in scale. As a pointer to the level of analysis that the Commission was to adopt, the entire boundary was divided into nominal sectors for separate analysis. The prospect of the large-scale transfers of territory originally envisaged by Collins and Griffith and which continued to be entertained by nationalists was further eroded. County Armagh was included in a sector that also comprised eastern County Monaghan and County Down. The other classified sectors were County Monaghan and South Tyrone; County Fermanagh and Southern Tironaill (Donegal); County Tyrone (western flank); and, Londonderry and Northern Tironaill (Donegal; see Irish Boundary Commission, 1969: 140-3).

The course of the oral hearings took the form of exploring points raised in the written submissions by individuals and other bodies and were held in locations including Rostrevor, Armagh, Enniskillen, Omagh, and Derry city. All the Commission's hearings were heard *in camera*, with only cursory details of who appeared and which jurisdiction was preferred being released in statements to the press. Control of local government added a significant degree of official sanction to the merits of respective cases, while associations of organised inhabitants presented opposition views.⁴⁰ With the practical and legal difficulties in holding plebiscites to ascertain the wishes of the inhabitants, it fell to representations like this to coordinate and organise local opinion that would otherwise go unheard. However, it has been suspected that the various rival local submissions merely secured the feeling and impression of justice being served, rather than in greatly swaying the minds of the commissioners (Hand, 1969: xvii). Overall, the hearings enabled the Commission to investigate the underlying factors and consequences of partition and analyse the dynamics from a narrower geographical perspective. It garnered an appreciation of how national political issues permeated down to a local scale.

Commission affairs were abruptly halted by Craig's decision to hold a general election in Northern Ireland in April 1925. No election had been held since May 1921 and with the Boundary Commission functioning, the opportunity to focus attention on the boundary issue would enable Craig to emphasise the issue at the expense of social and economic concerns. Nationalists fought the election as a *de facto* plebiscite for the Boundary Commission as there was no other alternative and fresh means to ascertain the wishes of the inhabitants. A total of 10 Nationalist candidates were returned. Nationalists won one seat in Antrim (out of seven); one in Armagh (out of four); one in Belfast West (out of four); one in Down (out of eight); four in Fermanagh/Tyrone (out of eight); and two in Londonderry (out of five). Republicans won a seat each in Armagh and Down. In the border constituencies of Armagh, Londonderry, Fermanagh and Tyrone, the Unionists increased their vote slightly with an aggregate majority of almost 17,000 over a declining nationalist vote.

As the Commission retreated from the public eye over the summer to consider all the evidence presented, it appeared curious that the bulk of the deliberations con-

⁴⁰ However, neither Donegal nor Tyrone County Council took the opportunity to provide evidence.

cerning its terms of reference did not take place until after virtually all of the evidence had been procured. In all, the Commission had heard 575 witnesses, representing 58 groups and public bodies and 10 individuals (Irish Boundary Commission, 1969: 12). Feetham's lengthy memorandum that was circulated to his fellow commissioners on 11 September 1925 addressed a series of crucial issues.⁴¹ He had concluded that Northern Ireland should remain as "the same provincial entity" and that there was consequently a scale of changes which could not be recommended (Irish Boundary Commission, 1969: 49; Hand, 1969: xiv). This placed a premium on the Government of Ireland Act of 1920 to the detriment of the 1921 Treaty and specifically the wishes of the inhabitants as contained in article 12, which arguably superseded the earlier legal instrument. In other words, *the principle of the territorial integrity of existing entities was judged superior to discharging the principle of self-determination of peoples* (Carty, 1996: 143; emphasis added).

Feetham interpreted article 12 as empowering the Commission to make two-way transfers, and dismissed ascertaining the wishes of the inhabitants by plebiscite, as such a provision was not made explicit in article 12. He also inferred that it was not intended that the Commission should "rely on the verdicts of bare majorities as sufficient to justify alterations of the existing boundary" (Irish Boundary Commission, 1969: 30). In the event, the 1911 census was to be adopted as the key source in assessing the wishes of the inhabitants although its data could not easily furnish details as to temporary inhabitants or the age and number of people that would be entitled to vote in a plebiscite. There was the important assumption that Protestants would desire to live in Northern Ireland and Catholics in the Free State. So in ascertaining the wishes of the inhabitants from 14-year-old census data, evidence regarding economic and geographical conditions, which unionists were largely content to emphasise, was garnered in more up-to-date detail via the hearings. Notably, Feetham had dominated in this regard as his fellow commissioners contributed relatively little in terms of questioning. As article 12 had not stipulated the territorial unit to be employed in ascertaining such wishes, the Commission would utilise the smallest available one for which data could be provided. These powers as defined would inevitably disappoint long-held nationalist expectations and presaged a much narrower geographical coverage (even to the extent of splitting townlands) than some had anticipated the Commission would encompass. Feetham further argued that county units could not be used for plebiscites or as individual tracts for transfer as it would introduce a new factor into consideration—"administrative conditions"—which would entail the wishes of inhabitants of lesser units such as rural districts or district electoral divisions being overridden (Irish Boundary Commission, 1969: 31-2). Yet Feetham was to select units, district electoral divisions, which existed purely for aggregate electoral purposes, although these were not historical or geographical units in any sense (Irish Boundary Commission, 1969: appendix 1: 35). Furthermore, Feetham was himself applying administrative conditions when Northern Ireland was recognised as a unit, which should maintain a parliament and government.

⁴¹ For concise treatment of these points see Andrews, 1960; the unadulterated explanation is contained in Irish Boundary Commission, 1969: 25-78.

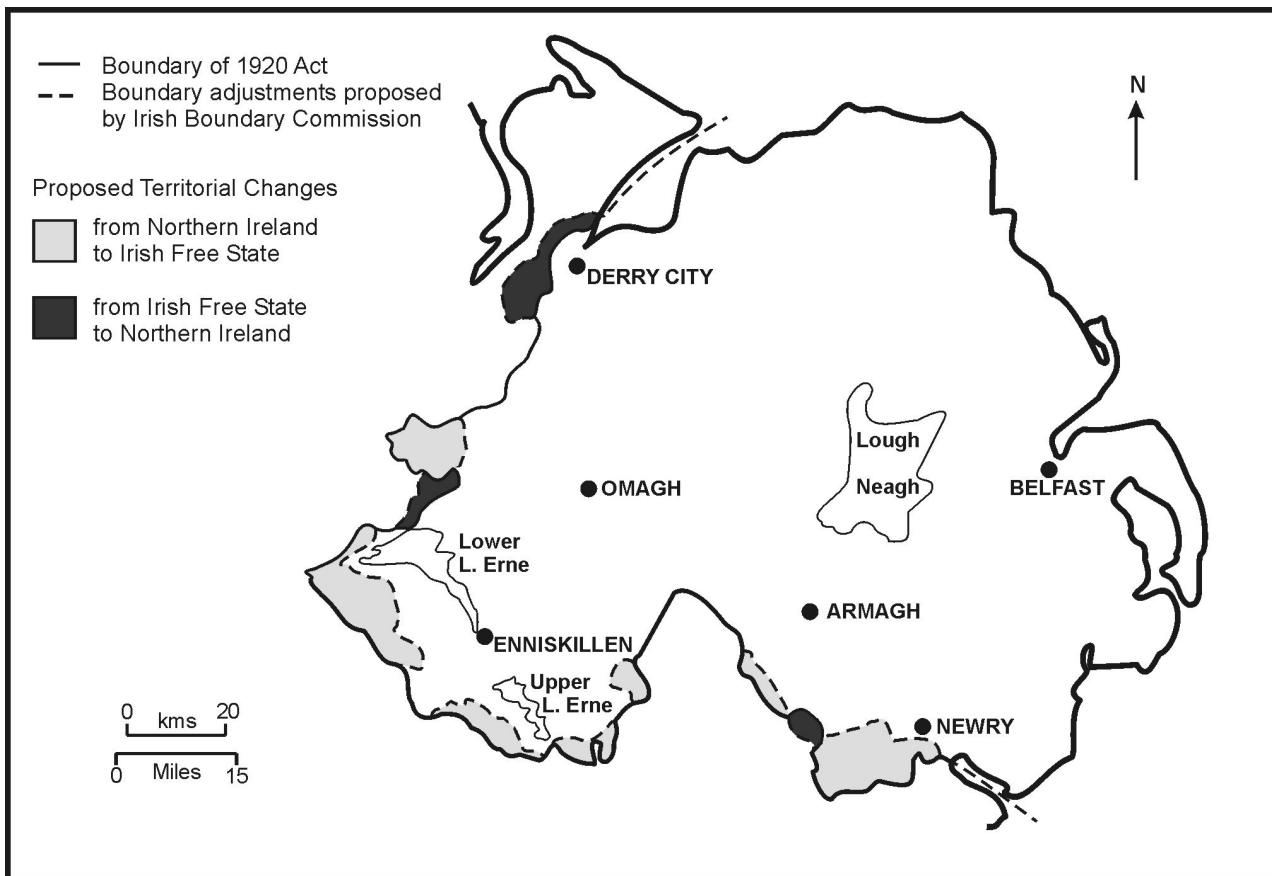


Figure 4. Irish Boundary Commission proposals, 1925

Source: Irish Boundary Commission, 1969.

Feetham saw fit to qualify the simple concept of majorities by adding a distinction between “bare” and “substantial” majorities. “Substantial” majorities would be required to justify an alteration in the existing boundary and this would be further subject to the other qualifications of economic and geographical conditions. This conclusion detracted from the democratic credentials of the entire exercise. Given the extent of intermingling between unionists and nationalists, the undefined substantial majority threshold determined that there would only be small and specific transfers. With MacNeill’s acquiescence, both Feetham and Fisher assumed that their Free State colleague accepted all these guiding principles.

DECOMMISSIONING THE IRISH BOUNDARY COMMISSION

On 17 October 1925, the commissioners drafted an outline of their decision, which embodied the general features of the new boundary line. MacNeill assented to the final award in the belief that “it would serve the great ultimate object of avoiding further controversy” (Hand, 1973: 259). As Hand has highlighted, the fact that the Protestants transferred to Northern Ireland were to bring half as many Catholics with them, whereas Catholics going the other way would bring only one-tenth of their number of Protestants, was glossed over (Hand, 1973: 249; see figure 4 and table 2). In sum, Northern Ireland’s territory would be reduced by 3.7%, and the

Table 2. Aggregate area and population recommended for transfer by Irish Boundary Commission

Direction of transfer	Acres	Sq. miles	Population	Catholics	"Non-Catholics"
To Irish Free State	183,290	282	31,319	27,843	3,476
To Northern Ireland	49,242	78	7,594	2,764	4,830

Source: Irish Boundary Commission, 1969: 146.

population by 1.8% as well as a boundary abridged from 280 to 229 miles. The swathes of territory imagined by Griffith in the Treaty talks would be unredeemed as Derry city, Newry, south Down and almost all of Tyrone and Fermanagh would remain within Northern Ireland.

One of the most significant aspects of the award was that not only was Derry city to be retained in Northern Ireland but also a section of 30,295 acres of County Donegal would be added to Northern Ireland and augment Derry city's hinterland within the jurisdiction. This was based on the fact that the area contained 3,230 "Non-Catholics" as opposed to 1,919 Catholics. However, the fate of Newry was more instructive as to how the various dimensions of article 12 were balanced by the Commission. Close to the boundary and possessing a population of which three-quarters were reported to be in favour of transfer, Newry's fate would be the measure for nationalists in judging the Commission's success or failure. Newry had been identified by Craig as significant in that it was the only matter arousing his concern as well as by O'Higgins, who judged it to be the "acid test" of the whole Boundary Commission process (Laffan, 1983: 102; Jones, 1971: 240). Newry dominated the Commission's commentary on the economic and geographical results of its award (Irish Boundary Commission, 1969: 129-39). The prevalence of local nationalist majorities, either individually or collectively, were not sufficiently substantial to override the much more subjective threshold of economic and geographical considerations. Following Feetham's strict legal interpretation of the controversial article 12, he became inclined to accept the unionist contention to view Newry in a larger regional context and it was thus seen as one of Belfast's commercial satellites. Feetham himself noted that Newry posed a distinct clash in his terms of reference but crucially proceeded to rule that where inhabitants' wishes and economic and geographical conditions were in conflict "under the terms of article 12 economic and geographic considerations must prevail" (Irish Boundary Commission, 1969: 137). Feetham felt that he had gone some way towards alleviating the manifest difficulties generated by the boundary and had succeeded in shortening its length. Regardless of political implications, his efforts were well-intentioned and, to him, legally justified, but as Hand has noted he did not appear to realise that "almost any change was capable of causing considerable trouble and that his proposals might well cause trouble utterly disproportionate to their possible benefits" (Hand, 1973: 249). However, culpability in this regard is better directed at the drafters of article 12 and the signatories of the Treaty.

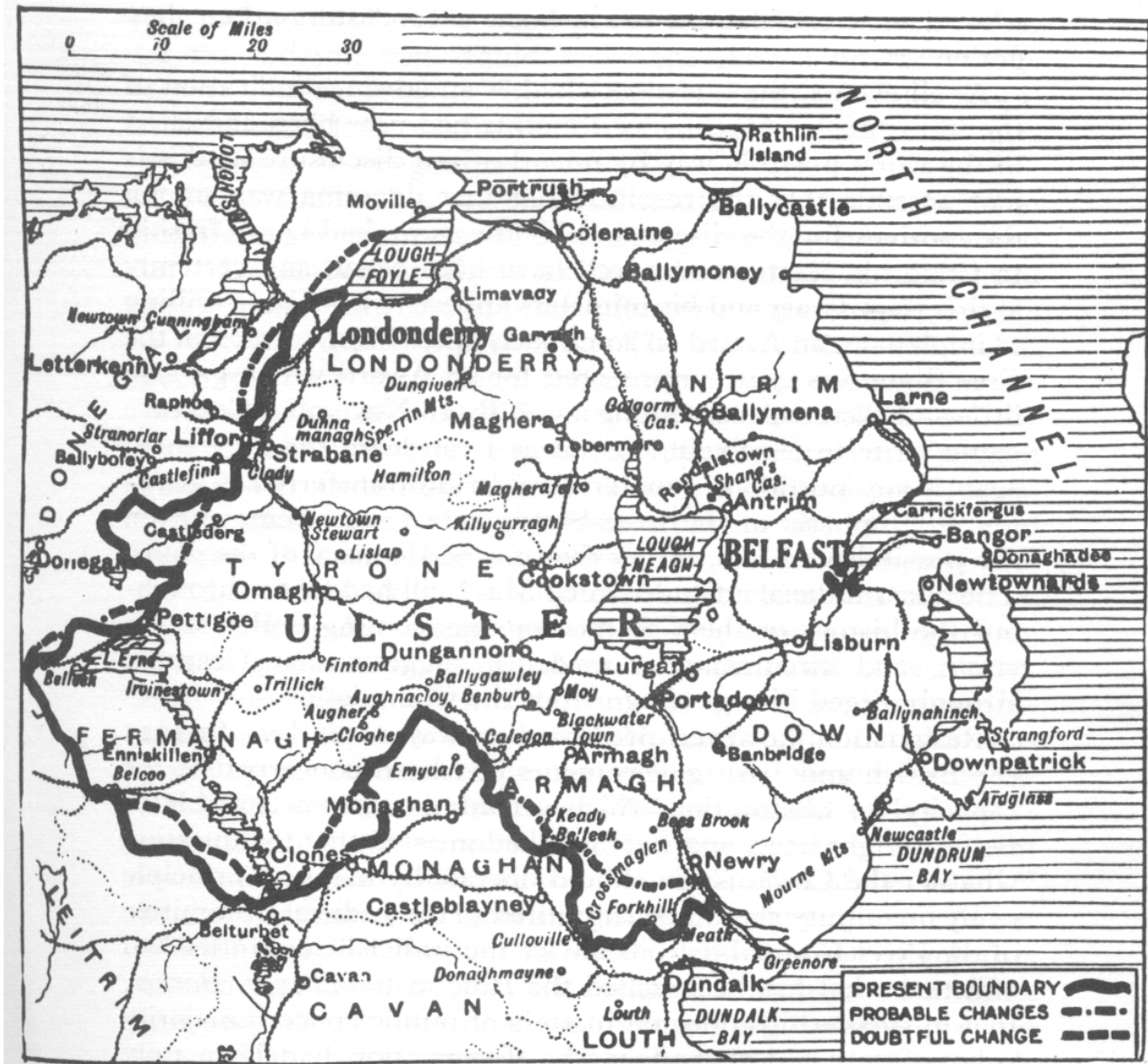


Figure 5. “The Boundary Position” Forecast, 1925

Source: *Morning Post*, 7 November 1925.

In defiance of a commitment to treat the Commission’s dealings as confidential, Joseph Fisher conducted periodic correspondence with Unionist figures as to progress. Nearing the conclusion of its operations, Fisher had assured Carson that

[Northern Ireland] will remain a solid and close-knit unit with five counties intact and the sixth somewhat trimmed on the outer edge. ... No centre of even secondary importance goes over, and with Derry, Strabane, Enniskillen, Newtownbutler, Keady and Newry in safe keeping your handiwork will survive. ... If anybody had suggested twelve months ago that we could have kept so much I would have laughed at him (Hand, 1973: 274).

When this notion found expression via an inspired forecast map that appeared in the unionist sympathetic newspaper the *Morning Post* in November 1925, the entire political situation was plunged into crisis, especially placing the Free State Govern-

ment in jeopardy (see figure 5). Although the forecast was not strictly accurate, it acquired substantial currency in public opinion.⁴² In the Free State, the shock of the meagre territorial gains forecast was overwhelmed by the prospects of having to cede territory especially in the east Donegal area around Derry city. There was a cumulative threat to the Free State Government of a Dáil defeat, the exploitation of the situation by Eamon de Valera from his self-exile of abstentionism, and even the possibility of the armed forces resisting territorial transfers.

The Free State could no longer tolerate the mounting abhorrence of a limited territorial transfer that also involved losing tracts of Donegal as suggested in the *Morning Post* forecast. The apogee of concern was reached when MacNeill resigned from the Commission on 20 November. This action was generally taken to confirm the accuracy of the published forecast. In the Dáil, MacNeill lamented Feetham's interpretation of the Commission's duties and discussed the extent of disagreement he had had with the chairman. He reserved a damning perspective of the Commission's inconsistency in the application of principles whereby "in the Chairman's view, it was competent, in one part of our award, for us to make economic considerations dominant and, in another place, to make the wishes of the inhabitants dominant" and that the "details came before us in a very gradual and a very piecemeal manner."⁴³ However, his resignation did nothing to alleviate the pressures now challenging the Free State Government as the remaining commissioners continued with concluding their work without him. As part of a hasty policy of damage limitation, the immediate aim then became focussed on preventing any report from being published when it would be given legal effect. Cosgrave and O'Higgins engaged in a hastily arranged series of talks with the British and Northern Ireland Governments. O'Higgins bemoaned the apparent inconsistency of the Commission:

Sector by sector they worked their way down the line, McNeill [sic] fighting all the way: they had began at Derry and finished at Newry. It would have been better if they had begun the other way as Newry is nationalist up to 75 per cent: the economic hinterland is nationalist and I cannot understand how the award could leave Newry out. The same arguments for leaving Newry out of the Free State were used against putting Eastern Donegal into Northern Ireland and applied in full—or fuller—force.⁴⁴

British Prime Minister Stanley Baldwin had outlined that the options now available were either to accept the original boundary with the restoration of civic rights to the Northern Catholic population or to impose the award of the Boundary Commission with the unpalatable risk of precipitating the fall of the Free State Government.⁴⁵ Baldwin wryly observed "As an outsider I cannot see how even an angel could de-

⁴² An authority on Irish cartography has observed: "On a purely political level, the forecast was not seriously misleading, but in detail it turns out to have been rather less correct than might have been expected from the contemporary evidence"; see Andrews, 1968: 479.

⁴³ Dáil Éireann, *Debates*, Vol. 13, col. 802 (24 November 1925).

⁴⁴ NAI, DT S4720A, "Minutes of meeting between Stanley Baldwin, Kevin O'Higgins, Patrick McGilligan and John O'Byrne" (28 November 1925).

⁴⁵ NAI, DT S4720A, "Notes of a meeting at Chequers" (28 November 1925).

wise a boundary which would be agreed.”⁴⁶ O’Higgins concentrated discussions on a possible arrangement that “would secure an amelioration of the conditions under which the Nationalists were at present living in North-East Ireland or to obtain some form of concession by which they would be able to deaden in the 26 counties the echo of the outcry of the Catholics in North-East Ireland.”⁴⁷ Craig was again proving obdurate as to any substantial concessions on his part so the objective for O’Higgins now was that to “sweeten their supporters either with concessions to Catholics by Craig, which he won’t give, or by article 5. Of the two, the latter would act faster” (Jones, 1971: 243). Article 5, was the other outstanding clause of the Treaty that had yet to be executed, and related to the Free State’s assumption of the United Kingdom’s public debt, subject to financial arbitration.

As there was a perceptible consensus emerging, it proved necessary to request the Boundary Commission to withhold its report from being formally published. On 3 December, when advised of the imminence of a tripartite agreement that would supersede the Commission’s conclusions, Feetham placed great emphasis on the value of its work. Pronouncing the original boundary an “accident”, he proceeded to acquaint his select audience with what must have appeared to be the then banal malaise facing Donegal farmers and the awkward circumstances confronting local border inhabitants.⁴⁸ Feetham feared that the integrity of the Commission would be tarnished if publication of the final report was halted and urged the need to publicly express the basis upon which its award had been founded. Cosgrave, for his part, elected to inject some political realism to the discussion when bluntly declaring that “it would be in the interests of Irish peace that the Report be burned or buried.”⁴⁹ Feetham yielded but his interpretation of article 12 was eventually published in the press.⁵⁰

The eventual tripartite agreement was relatively cursory but it contained profound elements. The Commission was officially revoked and the boundary as defined in the Government of Ireland Act of 1920 was recognised. Liabilities under article 5 of the Treaty were waived but the Free State undertook to assume liabilities and pay compensation arising from the war of independence and the civil war. The Council of Ireland was abolished and its powers relating to Northern Ireland were transferred to Belfast. There was to be an *ad hoc* and somewhat aspirational arrange-

⁴⁶ NAI, DT S4720A, “Minutes of meeting between Stanley Baldwin, Kevin O’Higgins, Patrick McGilligan and John O’Byrne” (28 November 1925).

⁴⁷ NAI, DT S4720A, “Draft notes of a conference held in the Board Room, Treasury, Whitehall, London” (1 December 1925).

⁴⁸ NAI, DT S4720A, “Notes of conference with the Irish Boundary Commission held in Stanley Baldwin’s Room, House of Commons” (3 December 1925).

⁴⁹ NAI, DT S4720A, “Notes of conference with the Irish Boundary Commission held in Stanley Baldwin’s Room, House of Commons” (3 December 1925).

⁵⁰ See *The Times*, 18 December 1925.

ment whereby both North and South would “meet together as and when necessary for the purpose of considering matters of common interest.”⁵¹

The agreement marked the final official acceptance of partition by the Free State, a development which would inevitably entail vocal denunciation from northern as well as more hardline sections of Irish nationalism. The Republican newspaper, *An Phoblacht*, sought to portray the agreement as a sordid financial deal—elaborating that “the Irish people awoke to read... at the time when most of them had just finished their tea, not knowing anything about it, [that] a large section of them had been sold into bondage by their countrymen.”⁵² The episode exposed to Northern nationalists the powerlessness of the Free State not only on partition but also in assisting northern nationalists. For others, the agreement was a victory for pragmatism as the territorial claims of the Free State and the financial claims of Great Britain were unlikely ever to be enforced without significant risk of conflict or destabilisation. Such pragmatism on the Free State’s part extended to the belief that eventually removing partition would necessitate immediately recognising it.

CONCLUSION AND OVERVIEW

The very existence of the Irish Boundary Commission affirmed that there was a critical corollary to the principle of partitioning Ireland—the conundrum of delimiting a boundary. The abstract concept of a boundary commission is usually deployed when efforts to negotiate the location of a boundary fail and recourse to an arbitration mechanism is necessary. Although boundary commissions may be charged with accomplishing an overall technical objective, they serve as *prima facie* devices in improving an extant boundary and thus state relations. The irony was that the Irish Boundary Commission certainly did improve state relations (or indeed arrest their deterioration) but only on account of the suppression of its final report.

In hindsight, as authors of the Government of Ireland Act, the British Government executed the functions of a *de facto* boundary commission in acting as the ultimate political guarantor in the entire narrative. However, with the Act being virtually ignored in the rest of Ireland, the boundary was not quite secured, although the concept of partition was an ever-hardening *fait accompli*. Remarkably, with regard to the most nominal of the boundary’s attributes, no explicit description of the course of the boundary accompanied its original delimitation as it is only cursorily defined in territorial terms in the Government of Ireland Act.

The 1921 Anglo-Irish Treaty endowed the boundary with a temporary and qualified recognition but established a disparity between a devolved government within the United Kingdom and the newly autonomous dominion of the Irish Free State. The initial tactical advantage offered by the Boundary Commission was converted into a potentially devastating political liability on account of the cryptic and ambiguous

⁵¹ Ireland (Confirmation of Agreement) Act, 1925, section 5 (5 & 6 Geo. V c. 77).

⁵² *An Phoblacht*, 11 December 1925.

wording of article 12 of the Treaty. Lack of negotiating experience explains why Griffith and Collins failed to ensure that their concept of a boundary commission was sufficiently articulated in the final instrument. While the tacit acceptance of Northern Ireland's existence in the Treaty was a concession to reality, article 12 constituted a legal fudge which could be interpreted in a variety of ways, but it crucially both secured the signing of the Treaty and sustained the nationalist aspiration to remove partition.

The wide scope for dispute that accompanies any boundary-making process demands precision in every respect. Thus the immeasurable subjectivity that pervaded the key clauses of article 12 ensured that its application was controversial and protracted. As a British cabinet secretary admitted article 12 "was not drafted as an Act of Parliament would be drafted" (Jones, 1971: 234). That there was no contingency for Northern Ireland's refusal to appoint a commissioner was extremely lax considering that it was not a formal party to the Treaty. From a geographical perspective, the oversight with regard to prescribing a spatial scale or adopting a territorial framework was a key flaw in leaving it to the ultimate judgement of the chairman. Questions of scale have dominated the political geography of the island of Ireland in that geographical majorities and minorities can be easily created, manipulated, or subverted. The cascading spiral of territorial scale that ranges between island, province, county, constituency, rural district, district electoral division, and townland can give differing complexions in representing political geography. The Boundary Commission episode testifies to how such variable scales can be inconsistently applied.

Article 12 suffered from temporal as well as spatial defects, especially with regard to making no provision for when it would actually meet, which would have a substantial bearing on the eventual formation and findings of the Irish Boundary Commission. The attempts by Collins to instigate the Commission was initially stymied by the British Government's reluctance to destabilise a still volatile political situation but later impeded by the escalation of the Irish civil war which, of course, claimed his own life. Free State policy on Northern Ireland was effectively reduced to the unpredictable execution of article 12. The only substantial policy advance the Free State made concerned the imposition of a customs barrier, which effectively stereotyped and entrenched the boundary, and thus "economic conditions", before the Commission even considered its remit.

Within the context of boundary commissions as a whole, the Irish Boundary Commission was an unprecedented phenomenon. Until Versailles, boundary commissions were rare in Europe, but Britain possessed considerable experience of them worldwide. A boundary commission is conventionally issued with instructions in the form of notes exchanged between the governments concerned that refer to dates and venues of meetings, agreed procedures and contingencies, definition of powers, other specific tasks, and surveying and transport matters. Until the *Handbook* on boundary making by Jones in 1945, there was no set standard or text that advised on boundary clause drafting or on conduct of a commission in the field. Yet, while boundary commissions were generally fairly rare phenomena hitherto, the Versailles precedents supplied adequate templates in attempting to enshrine the principle of self-determination. However, in Ireland, the people on the ground were

never afforded the direct consultation of a plebiscite. The Irish Boundary Commission did eventually serve as an alternative and limited channel for this, but this was a belated exercise that did not accompany the Irish border's original delimitation.

As far as the Commission's composition was concerned, Feetham and Fisher both had legal training, but MacNeill was pathetically out of his depth. However, each of the commissioners was selected out of political expediency rather than for any established competence or insight into boundary making. FB Bourdillon and RA Boger, veterans of the Upper Silesia boundary commission exercise, endowed the Irish Boundary Commission with administrative and technical competence, but as to staffing levels and available resources it was rather poorly served. Again such deficiencies were obviously due to article 12, which arguably encapsulated the idea of an *internal* boundary commission rather than a fully-fledged international one, as the Irish Free State was to remain within the British ambit of Dominions.

The Irish example emphasises the observation that despite all a boundary commission's efforts and conclusions, they are ultimately subject to approval at governmental level, thus effectively appending political checks and qualifications to any boundary making process. Boundary commission mechanisms ideally contribute to the speedy, fair, and competent resolution of disputes. Such mechanisms are best represented in collective bodies with strict terms of reference than relying on individuals that are liable both to have a limited approach and a propensity to over-emphasise certain factors at the expense of a more holistic view. The provenance, operation, and dissolution of the Irish Boundary Commission in the 1912-1925 period epitomise more than anything else the pitfalls of poor phraseology, simple mistakes, and intense partiality.

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