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# Setting the Sun on Empire: How Nationalism in the North of Ireland

## Could Protect Human Rights

Juliet Scholes\*

### I. Introduction

In recent years, nationalist movements have re-emerged as a prominent force in global politics, particularly throughout Europe.<sup>1</sup> While nationalism has a storied history across the European continent, the horrors of both world wars in the first half of the twentieth century inspired the creation of international liberal<sup>2</sup> institutions as a means to encourage transnational cooperation and diplomacy, in the hopes of preventing a resurgence of the types of dangerous nationalism that led to the bloodiest armed conflict in modern history.<sup>3</sup> These institutions have been largely successful in encouraging a cooperative international order within Europe.<sup>4</sup> Recently, however, powerful nationalist movements have sprouted largely as a backlash against an influx of migrants and refugees and a European Union mandate of shared responsibility receive them.<sup>5</sup> These

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<sup>1</sup> Fielder, *infra* note 84.

<sup>2</sup> “Liberalism,” like many other abstract political doctrines is difficult to define. For the purposes of this paper, it suffices to draw on John Rawls’ exposition that liberalism is an answer to the “fundamental question about political justice in a democratic society, namely what is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society ... from one generation to the next.” JOHN RAWLS, 3 POLITICAL LIBERALISM (1993). Analogized to the global order, we may understand nation-states as taking the place of citizens, and voluntary international institutions as the society’s governing body. Thus, there is a “fair system of cooperation [by means of] ... publicly recognized rules and procedures that those cooperating accept and regard as properly regulating their conduct” *id.* at 15–16, among nations “deeply divided on religious, philosophical, and moral doctrines.” *Id.* at 10.

<sup>3</sup> See, e.g., John Home, *The First World War: The Aftermath*, THE IRISH TIMES (Apr. 24, 2018), <https://www.irishtimes.com/culture/heritage/the-first-world-war-the-aftermath-1.3452686>.

<sup>4</sup> See, e.g., Snyder, *infra* note 14 at 57 (“For the first few decades following World War II, embedded liberalism ... succeeded in granting autonomy and democratic legitimacy to nation-states while curbing aggressive nationalism”); see also Fielder, *infra* note 84 at 226 for the more blunt summation that “The EU reduces European border conflicts;” Fox and Vermeersch, *infra* note 97 at 340 (“[N]ationalism and its retrograde derivatives were incompatible with the EU’s plans for a postnational Europe.”).

<sup>5</sup> Ashok Swain, *Increasing Migration Pressure and Rising Nationalism: Implications for Multilateralism and SDG Implementation* (June 2019), [https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/SDO\\_BP\\_Swain.pdf](https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/SDO_BP_Swain.pdf).

movements have had varying political and electoral success within their countries. The most clear-cut example of such success for an anti-international ideology is the 2016 Brexit referendum, with which Great Britain voted to remove itself from the European Union.<sup>6</sup>

Many commentators and scholars have espoused that nationalism is inherently dangerous for the human rights that liberal international bodies are meant to protect.<sup>7</sup> While this is undoubtedly true in certain situations, particularly where nationalism is based on a theory of ethnic superiority, it is not universal and is better understood as too broad an assertion. In the case of Brexit, nationalism has indeed presented itself as a threat to the human rights of British and Irish citizens living under British rule in Northern Ireland.<sup>8</sup> However, these threats could be neutralized by a revitalization of Northern Irish nationalism, which with political success, could expel Britain as its ruler and rejoin politically with the Republic of Ireland. As the Republic of Ireland is a member of the European Union without plans to remove itself, nationalism in this situation would in fact work as a safeguard for the human rights currently protected by the European Union (EU).

This comment seeks to challenge common conceptions of nationalism as being inherently dangerous, as well as definitions of human rights which do not include an economic element. Using Northern Ireland's nationalist fight for home rule rather than British occupation, this comment will demonstrate that at least in that case, nationalism can actually protect human rights rather than threaten them, especially once one acknowledges that economic rights should be

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<sup>6</sup> James Rodgers, *Brexit Caps Nigel Farage's Unexpected Rise, and the Triumph of Nationalism Over Liberalism*, NBC NEWS (Jan. 30, 2020), <https://www.nbcnews.com/think/opinion/brexit-caps-nigel-farage-s-unexpected-rise-triumph-nationalism-over-ncna-1126881>.

<sup>7</sup> E.g., Fielder, *infra* note 84 at 232 (“[Without a] European identity, nationalist identities will grow, which are often a platform for xenophobia, racism, and actions that will severely impact human rights.”); Fox and Vermeersch, *infra* note 97 at 343 (“Much of the recent headline grabbing nationalist activity in the region, from violence against Roma in Hungary to the anti-Semitic activities of skinheads in Poland, has occurred not only outside mainstream and EU political norms and structures but in many cases *in explicit defiance of them*.” (Emphasis added)).

<sup>8</sup> Benjamin Ward, *UK's Bid for Brexit at All Costs Will Damage Human Rights*, HUMAN RIGHTS WATCH (Sept. 11, 2020), <https://www.hrw.org/news/2020/09/11/uks-bid-brexit-all-costs-will-damage-human-rights#>.

included in any characterization of human rights. Part II of this comment will briefly delineate the rise of the modern European nation-state and explain the symbiotic relationship between the development of such states and nationalist ideologies, culminating in a short history of the pre-WWII European nationalist movements whose existence led directly to liberal international institutions meant to protect human rights, such as the European Union (EU). Part III will look at some of the nationalist movements with significant power in Europe today, specifically in Hungary and the United Kingdom, and explain how these movements endanger human rights. Part IV will provide a short history of the successful nationalist movement in India, as well as an explanation of the historical underpinnings of nationalism in Northern Ireland. It will then posit an argument that political success for Northern Irish nationalists today could actually protect against the threats to human rights posed by Brexit.

## II. A Brief History of The Modern Nation and Nationalism

In today's world, it is difficult to envision a global order without nation-states. In many ways, the international regime and some of the most pressing cross-border issues have already moved *beyond* the actions of national governments and instead are dominated by globalized non-state actors.<sup>9</sup> However, simple logic tells us that the modern conception of a nation-state had to have *developed* at some point, or we would still be in the age of empires. This leaves questions of what defines a modern nation and when the nation as we know it came to exist, and the

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<sup>9</sup> The most obvious example of this is political violence, or its more commonplace term of terrorism, committed frequently by "the quintessential illegal non-state actor," namely, transnational terrorist groups like Al Qaeda or Boko Haram. Neal A. Pollard, *Globalization's Bastards: Illegitimate Non-State Actors in International Law*, 210 INT'L LAW, LOW INTENSITY CONFLICT & LAW ENFORCEMENT 211 (2002). However, there are several less glaring examples of non-state actors displacing the roles associated with the state, such as multinational corporations operating as "a substitute for the market as a method of organizing international exchange" Stephen Hymer, *The Efficiency (Contradictions) of Multinational Corporations*, 441 THE AM. ECON. REV. 441 (1970) and of course the subject of human rights, which though "ultimately implemented and ensured by states," are greatly influenced by non-governmental organizations (NGOs) like Amnesty International. WENDY WONG, 29 INTERNAL AFFAIRS: HOW THE STRUCTURE OF NGOS TRANSFORMS HUMAN RIGHTS (2012).

subsequent question of the role nationalism played in that development or vice versa. This section provides necessary background information on the rise of the modern European nation, the phases of European nationalism which occurred in conjunction with the switch from monarchies to constitutional democracies, and the creation of international institutions to prevent recurrence of the evils brought on by some of those nationalist movements.

#### A. The Spring of Nations: The Development of the Modern European Nation in 1848

Europe is no stranger to nationalism. While many people today would think of the European kingdoms of the late Middle Ages as “nations,” most nations as we now define them<sup>10</sup> did not exist until after the French and American Revolutions in the late eighteenth-century.<sup>11</sup> Of course, human beings have been grouped territorially and with at least a myth of common ancestry since far before that, and “in most cases, [there is] a more or less powerful link between modern nations and pre-existing, and often pre-modern, [ethnic communities].”<sup>12</sup> While more civic-focused elements later came to relevance in the evolution from ethnic communities to “nations,” one still present and important aspect of many national identities is its “ethno-history,” or the shared, subjective understanding of the communal history as opposed to the objective version of it that an outsider might describe.<sup>13</sup> As time went on, modern states “increasingly fused with [their]

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<sup>10</sup> The sociologist Anthony Smith defines a modern nation as “a named human population sharing an historic territory, common myths and historical memories, a mass, public culture, a common economy and common legal rights and duties for all members,” Smith, *infra* note 11, at 24. For others, a “nation” can be found where “a majority of the designated population participates in public life” or where “a significant minority of the population outside the ruling elite reveal a national consciousness.” *Id.* at n. 2 (citations omitted). These alternative definitions, however, are both too overinclusive, in that the latter could include territorial kingdoms going back well before anything like a modern nation could be said to exist, and too underinclusive, in that the former would call into question whether a democratic country in which the majority of voting-eligible citizens do not vote is indeed a “nation.” For Smith, these definitions would more appropriately describe “pre-nations,” as they could exist before the key *processes* of nation development (i.e., territorialization, homogenization, legal standardization) occurred to create a modern nation. *Id.*

<sup>11</sup> Anthony Smith, *Ethno-Symbolism and the Study of Nationalism*, in *NATIONS AND NATIONALISM: A READER* 24 (Philip Spencer and Howard Wollman, eds., 2005).

<sup>12</sup> *Id.* at 25.

<sup>13</sup> *Id.* at 28.

nation[s],” as powerful social and civic institutions like government education systems and legal codes developed symbiotically with a social contract between the members of the nation, who demanded the right to participate in its governance, and the government, which was to provide such institutions in exchange for the “blood and treasure” given it by its people.<sup>14</sup> Even the territorial aspect of the modern nation was an innovation at this time—for most monarchical societies, governance was not confined by strict geographical boundaries, but was exercised as “different bundles of powers over different areas and groups.”<sup>15</sup>

In the European context, the beginnings of the modern conception of a nation trace back to the first half of the nineteenth-century, when, in England, some property-owners were given the right to vote and cities became able to elect Members of Parliament, and in France, the long-standing monarchical power was tempered by a constitution which provided a system of selective electoralism for a lower parliamentary house.<sup>16</sup> Even with these radical changes, the difference between pure monarchy and these allegedly different systems was negligible: in England only three percent of the population was enfranchised, and in France, a paltry one-half of one percent was enfranchised.<sup>17</sup>

Monarchies and entrenched elite powers already viewed nationalist movements as an existential threat by this early point,<sup>18</sup> but many in the French aristocracy still considered Alexis de Tocqueville’s January 1848 forebodings that they were ““sleeping in a volcano ... [and that] the wind of revolution [was] in the air”” to be an overly dramatic perception of reality.<sup>19</sup>

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<sup>14</sup> Jack Snyder, *The Broken Bargain: How Nationalism Came Back*, 98 FOREIGN AFF. 54, at 55 (2019). Snyder also points out that in some regions, states developed in areas not ethnically homogenous, and homogeneity occurred by the decidedly less civil means of ethnic cleansing and expulsion. *Id.* at 55 (citing Ernest Gellner generally).

<sup>15</sup> John Breuilly, *Nationalism and the State*, in NATIONS AND NATIONALISM: A READER 65 (Philip Spencer and Howard Wollman, eds., 2005).

<sup>16</sup> Mike Rapport, 1848: YEAR OF REVOLUTION 2 (2009).

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 42.

Tocqueville's premonition, however, soon proved to be quite accurate; just the next month, mass protests against the monarchy and its associated elite took hold of Paris, and with the nascent technological developments of railways, steamships, and telegraphs, news of the revolt spread quickly to other European kingdoms and inspired popular demand for constitutional government and its related institutions.<sup>20</sup>

Like the exponential rate at which such technologies developed during this industrial age, so too did the winds of radical governmental change blow quickly. Just the next month after the February revolution in France, workers and students organized mass demonstrations throughout the German states, and dozens of delegates from said states assembled to collectivize demands for “‘a more complete assembly of trusted men from all German peoples,’ [and] a ‘pre-parliament’ [...] to arrange elections for a German national assembly,’ which in turn would draft an all-German constitution.”<sup>21</sup>

These particular demands exemplify the modern idea of a collective nation comprised of a common ethnic people operating a democratic liberal government. This combination of ethnic-based coalition-building and constitutional governance thus far typical of this pivotal year also took hold of the Magyar ethnic group in what is now called Hungary, where liberal-minded revolutionaries made many of the demands as their French and German counterparts, but with a more decided emphasis on ethnicity or nationality: their list of requirements included the expulsion of non-Hungarian troops as well as the absorption of Transylvania from Romania.<sup>22</sup>

The tenets of the Hungarian uprising quickly proved to be the harbinger of attitudes that were to flourish throughout the rest of these blossoming European republics. In France, the seed

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<sup>20</sup> *Id.* at 57—58; Rapport notes that in Germany, for example, revolutionaries demanded not just constitutions, but also a free press, jury trials, and a popular militia. *Id.*

<sup>21</sup> *Id.* at 59 (citations omitted).

<sup>22</sup> Rapport, *supra* note 16 at 68.

which had sprouted the continental push toward republic-building, the republican uprising organizers sought to parlay their country's famed revolutionary spirit into "an energetic foreign policy ... sending patriotic armies bursting forth, liberating Italy and Poland and spreading the gospel of democracy."<sup>23</sup> While they saw their success in establishing a provisional democratic government as but one piece of a continental puzzle, the actual members of that government were less inclined to support revolution elsewhere, and in order to extinguish ideas of transnational solidarity, they appealed to nationalist sentiment.<sup>24</sup>

## B. Nationalism in Europe

While democratic constitutions did not begin coming to fruition until the mid-nineteenth Century, nationalism was easy to find on the European continent well before that. There are varying definitions of nationalism. For some, nationalism is "an awareness shared by a group of people who feel strongly attached to a particular land and who possess a common culture and common history marked by shared glories and sufferings."<sup>25</sup> This conception of nationalism centers ethnic commonality as its most important factor. Others would define nationalism as more focused on the civic or political unit of the nation, identifying it as "the doctrine that the cultural unit of the nation, whether defined along civic or ethnic lines, should be congruent with the political unit of the state."<sup>26</sup> Although there is a possible ethnic element in this definition of nationalism, what separates it from historical ethnic collectivism is that its primary marker is that "political loyalties ... coincide with national boundaries."<sup>27</sup> Still others define nationalism along different lines, such as Smith's definition of "an ideological movement for attaining and

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<sup>23</sup> *Id.* at 114.

<sup>24</sup> *Id.* at 115. Rapport notes that the "firebrands" did not listen to the nationalist urgings, however, and still pushed for cross-border solidarity in overthrowing monarchies. *Id.*

<sup>25</sup> Marvin Perry, *The Evolution of Modern European Nationalism*, 13 J. OF EAST AND WEST STUDIES 23, at 23.

<sup>26</sup> Snyder, *supra* note 14, at 54.

<sup>27</sup> *Id.*

maintaining identity, unity and autonomy of a social group some of whose members deem it to constitute an actual or potential nation.”<sup>28</sup>

While these definitions certainly share similarities and are likely applicable to many of the same iterations of so-called nationalist movements, the lack of a precise definition serves as an apt symbol for the failure of political and academic commentary to take into account the sometimes subtle but frequently significant differences between the various movements. A failure to acknowledge that not all of these movements are the same lends legitimacy to the argument that the more invidious of these movements are the victims of bias, thus enabling them to garner sympathy.

Such failure is commonplace: one scholar suggests, “Elie Kedourie’s definition ... remains widely accepted: a nationalist doctrine ‘holds that humanity is naturally divided into nations, that nations are known by certain characteristics which can be ascertained, and that the only legitimate type of government is national self-government.’”<sup>29</sup> While this definition might not be in actual contradiction with the others noted (or the countless alternatives found throughout various academic disciplines), it is perhaps over-encompassing (individual nationalist movements might not necessarily care whether other countries or people are self-governed, and indeed, many of them believe that their own group’s ethnic superiority demands that they govern other “inferior” territorial ethnic groups), and clearly the assertion that this is *the* accepted definition is overstated, as is evidenced by the existence of so many different conceptualizations.

A belief that all “nationalist” movements truly belong under the same umbrella term is also plainly inaccurate and should be corrected for its own sake: the nationalist movement of Northern

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<sup>28</sup> Smith, *supra* note 11, at 30.

<sup>29</sup> Brian Porter, *The Social Nation and Its Figures: English Liberalism and Polish Nationalism in Late Nineteenth-Century Warsaw*, 101 THE AM. HIST. REV. 1470, 1472 (1996) (citing Elie Kedourie, NATIONALISM 9 (3rd ed. 1960)).

Ireland bears little resemblance to many of the nationalist movements throughout the rest of Europe and it is a disservice to its supporters to co-categorize them. Part of the difficulty in precisely defining nationalism comes from the significant variances among movements all claiming to be “nationalist.” As will be explained, Northern Irish nationalism has traditionally sought different aims than many other European nationalist movements, but it is necessary to provide background of European nationalism before those differences can be properly understood.

### 1. Historical Nationalism in Europe

To understand today’s rising nationalism, it is crucial to understand the historical tradition from which it derived. As Marvin Perry notes, “[t]he essential components of modern nationalism emerged at the time of the French Revolution [because] [t]he Revolution asserted the principle that sovereignty was derived from the nation, the people as a whole.”<sup>30</sup> Thus, well before the 1848 Spring of Nations, the idea that the state was the product of its people rather than its monarch had significant support.<sup>31</sup> It is this ideology, that the people of a nation are the source of that nation’s power, that allowed for the symbiotic development of modern, anti-monarchical nations, and nationalism.<sup>32</sup> For the Jacobin revolutionaries, the nation took the place in the heart that was typically held by religion: it became the only non-trivial thing, deserving of total reverence.<sup>33</sup> The newly conceptualized relationship between the nation and its people, though, also gave those people a quasi-religious importance in that “[t]he modern state was now regarded as deriving its sovereignty from the people, not from God.”<sup>34</sup>

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<sup>30</sup> Perry, *supra* note 25, at 24.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 25 (citing J.H. Hayes, THE HISTORICAL EVOLUTION OF MODERN EUROPEAN NATIONALISM 55 (Richard R. Smith, 1931)).

<sup>34</sup> Breuille, *supra* note 15, at 66.

Some of the same voices of the French Revolution, however, also envisioned the nation-state not just as an object of revery in its own right, but as the essential mechanism through which individual liberty, equality, and the ideals of the Enlightenment could be protected.<sup>35</sup> Thus was born the arguably fundamental tension between nationalism and liberalism, as a focus on the interests of the French in particular was difficult to square with the principles of universal equality.<sup>36</sup>

In much the same way that the ideas behind the 1848 revolutions would later naturally spread throughout Europe, the premise of nationalism took root in other parts of the continent at around the same time that they did in France.<sup>37</sup> In some cases, these developments were concurrent. Hungary, notably, underwent a radical shift from feudalism to liberalism as part of the 1848 sea change in only a few weeks.<sup>38</sup> Hungarian liberalism was heavily dependent on ethnic considerations, with a focus on Magyar independence from the Hapsburg Empire; when parliament increased suffrage rights, it was only for male speakers of Magyar.<sup>39</sup> The Hungarian liberal agenda went beyond voting rights, and also included press freedom, religious freedom, and an end to the effective caste system of serfdom and nobility privilege.<sup>40</sup> But nationalism lurked as a simultaneous powerful force in the movement for radical Hungarian change, as the Magyars sought not only to increase the power outside of the imperial elite, but also to annex land beyond

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<sup>35</sup> Perry, *supra* note 25, at 25.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 26. Perry notes that, for example, the German philosopher Johann Gottfried Herder, in the late 18<sup>th</sup> century, coined the term “Volksgeist,” or, “the soul of the people” to describe the idea that “each people was unique and creative” and that they expressed this uniqueness culturally, through language, literature, and folk traditions. This German cultural nationalism, however, embraced a monarchical government as an expression of that rich past, instead rejecting French ideas of state-enforced liberty. *Id.* at 26—27.

<sup>38</sup> Perry, *supra* note 25, at 28.

<sup>39</sup> *Id.* Language fluency and gender, of course, were not the only requirements of suffrage, as only male Magyar speakers *who owned property* were enfranchised. *Id.*

<sup>40</sup> *Id.*

their own territory in the hopes of (in their eyes) improving its Serb, Slovak, and Rumanian inhabitants into national and cultural Hungarians.<sup>41</sup>

In England, the seeds of nationalism<sup>42</sup> were planted even sooner than elsewhere on the continent.<sup>43</sup> Because of its geographic isolation from the rest of Europe, England was uniquely able to develop “the growth of a national feeling” as early as the seventeenth century.<sup>44</sup> In England, this nascent nationalist sentiment fell on the side of the chasm wherein it progressed in tandem with liberalist ideas, rather than in opposition to them. Because the English were able to look inward and improve domestic economic conditions, the conditions for individual liberty, a uniform legal code, parliamentary willingness to care about public opinion, and an end to feudalism were ripe.<sup>45</sup> Perhaps it is due to this long history of nationalist thought in England that it “was the first country where a national consciousness deeply embraced the whole people.”<sup>46</sup>

## 2. Pre-World War European Nationalism

If the eighteenth and nineteenth centuries largely birthed European nationalism, the turn and first half of the twentieth century saw its apex, and the point at which its dangerous potential became impossible to ignore. Although nationalism is essentially about promoting the union of the national people and the apparatus of the state, it cannot be ignored that “nationalism is as much

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<sup>41</sup> *Id.*

<sup>42</sup> The conceptual existence of English nationalism is arguable, and frequently argued. While Newman makes the argument that English nationalism not only exists but is comparable to other common forms of nation-state nationalism, Kumar posits that as an imperialist nation England’s brand of nationalism can only be compared to the quite different forms typical of Russian or Turk nationalism. Still others would argue that English nationalism is distinct from *United Kingdom* nationalism and does not exist at all. Compare Gerald Newman, *THE RISE OF ENGLISH NATIONALISM* (1987) with Krishan Kumar, *Empire and English Nationalism*, 12 *NATIONS AND NATIONALISM* 1 and Jeremy Black, Book Review, *FOR. AFF.*, Mar./Apr. 2019.

<sup>43</sup> Hans Kohn, *The Genesis and Character of English Nationalism*, 1 *J. OF THE HIST. OF IDEAS* 69, 70 (1940). Kohn points out that Tudor rule “laid the foundations for that national homogeneity which was the necessary condition for the later development of nationalism” in the late fifteenth century. *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 91.

about exclusion as it is about inclusion.”<sup>47</sup> As Perry notes, “[e]xtreme nationalism was a general European phenomenon, but it was especially dangerous in Germany.”<sup>48</sup> There, by the end of the nineteenth century the Volkish thought tradition had evolved from more benign pride in German cultural tradition to a belief in the inherent superiority of the German spirit, and the implication that Germany should reject the Western liberalist order in favor of its own national traditions.<sup>49</sup>

Germany, though, was not the only example of nationalist-inspired danger, and this danger would soon prove catastrophic. Proponents of the liberal order in the previous century had mistakenly imagined that the replacement of overreaching monarchies with nationality-based states would lead to peace between them.<sup>50</sup> However, the underpinnings of racial supremacy that had taken hold of nationalist movements like that of Germany now led these nations to believe that subjugation of others was appropriate.<sup>51</sup> One salient example of this is the German nationalist argument against the minority Poles in Prussia in the late nineteenth century.<sup>52</sup> In later years, Hitler would build Nazism off of both this disdain for other ethnic groups and the related belief that the Germans were entitled to expand their nation, writing in *Mein Kampf* that “[t]he only thing that will ensure a people its freedom of existence ... is sufficient space on this earth.”<sup>53</sup> The consequences of this ideology need not be recounted here.

But it is not just the nationalism within an ethnic majority that can lead to warfare. As Van Evera notes, nationalist-driven policies which oppress minorities can lead to reactionary violence by either inspiring violent backlash directly from those oppressed groups, or by motivating the

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<sup>47</sup> Oliver Zimmer, NATIONALISM IN EUROPE: 1890-1940 50 (2003). As will be later addressed, there is an important distinction between different nationalist movements based on *who* the movement seeks to “exclude.”

<sup>48</sup> Perry, *supra* note 25 at 30.

<sup>49</sup> *Id.* at 30—31.

<sup>50</sup> *Id.* at 36.

<sup>51</sup> *Id.*

<sup>52</sup> Zimmer, *supra* note 47 at 55.

<sup>53</sup> Anthony D. Smith, NATIONALISM IN THE TWENTIETH CENTURY 74 (1979) (citations omitted).

homelands of the oppressed to instigate violence against the oppressor nations.<sup>54</sup> The obvious example of this possibility is Archduke Franz Ferdinand's assassination by the Serbian nationalist Gavrilo Princip in response to the Austro-Hungarian empire's annexation of Bosnia and Herzegovina.<sup>55</sup> Though of course there were myriad others, this assassination is frequently touted as one of the primary causes of the first World War.<sup>56</sup>

### C. International Law in Response to the Great Wars

After the conclusion of the First World War, the victorious European states combined efforts with the United States to recreate the international order such that the vulnerabilities which had led to such a large-scale disastrous conflict would not be repeated.<sup>57</sup> In particular, the victors gave significant attention to the abrogation of minority rights which had contributed to nationalistic resentment and transnational aggression.<sup>58</sup> The solution that this effort reached was the creation of an international regime intended to resolve such tensions: in creating the League of Nations and redrawing the European map, nationalism was indeed viewed as potentially problematic (owing to the concern regarding the subjugation of minorities), but it was also for the first time a relevant factor in the creation of state boundaries.<sup>59</sup>

In addition to the focus on human rights in the post-war peace deals, the victor countries focused heavily on economic factors, namely by requiring Germany to pay massive reparations both as a punishment for its war guilt and as a means to ensure it could not afford to go to war

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<sup>54</sup> Stephanie Van Evera, *Hypotheses on Nationalism and War*, 18 INT'L SEC. 5, 14 (1994).

<sup>55</sup> See, e.g., *Not Forgotten*, N.Y. TIMES (June 28, 2016), <https://www.nytimes.com/interactive/projects/cp/obituaries/archives/archduke-franz-ferdinand-world-war>.

<sup>56</sup> See, e.g., *id.*; IND. DEP'T OF EDUC.: World War I Resources, <https://www.doe.in.gov/sites/default/files/standards/guide.pdf>.

<sup>57</sup> See, e.g., Home, *supra* note 3.

<sup>58</sup> Rhona K.M. Smith, 20–21 INT'L HUMAN RIGHTS LAW (9th ed. 2020).

<sup>59</sup> *Id.*

again for a long time.<sup>60</sup> The peace treaties reduced Germany's territory by a whopping fourteen percent and its population by over six million citizens.<sup>61</sup> As previously noted, transforming one nation's citizens into another's ethnic minority can lead to dangerous forms of nationalism.<sup>62</sup> This section will briefly explain the creation of liberal international institutions as a means to prevent World War III and to protect the human rights of the citizens of their member states. It will then posit that "human rights" as a concept is frequently understood incompletely, as in many conceptualizations economic rights are left out of the definition.

### 1. Post-WWI Liberalism

In 1945, following the horrors of World War II, fifty-one countries once again saw fit to attempt a regression into such violence and this time created the United Nations (UN).<sup>63</sup> The following year, the League of Nations was formally dissolved and its mandate given instead to the UN.<sup>64</sup> Once again, economics played a significant factor in the post-war order, this time at the 1944 Bretton Woods conference, culminating in the creation of the World Bank and the International Monetary Fund (IMF).<sup>65</sup> While these institutions focused on regulating possible fluctuations in the international market through loans and financial aid,<sup>66</sup> the 1948 Marshall Plan provided for U.S. aid to western European countries, stipulated on open transnational markets as a boost to the liberal cooperation of international workers.<sup>67</sup>

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<sup>60</sup> See, e.g., Olivia Lang, *Why Has Germany Taken so Long to Pay off its WWI Debt?*, BBC (Oct. 2, 2010), <https://www.bbc.com/news/world-europe-11442892>.

<sup>61</sup> Klaus Schwabe, *World War I and the Rise of Hitler*, 38 *DIPLOMATIC HISTORY* 864, 864 (2014).

<sup>62</sup> Van Evera, *supra* note 54.

<sup>63</sup> U.N.: HISTORY OF THE UN (2015).

<sup>64</sup> *ENCYCLOPEDIA BRITANNICA: THE LEAGUE OF NATIONS* (2020).

<sup>65</sup> Snyder, *supra* note 14, at 57.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 56—57.

Though human rights law has a complex and disputed history,<sup>68</sup> for the purpose of understanding how modern nationalist movements can affect human rights, the crucial starting point is the post-WW2 years, and the adoption of the Universal Declaration of Human Rights (UDHR) by the UN in 1948.<sup>69</sup> Based on this Declaration, The Council of Europe (which had also been founded following the War with the aim of protecting human rights and promoting democracy), drafted and signed its own European Convention on Human Rights (ECHR) in 1950.<sup>70</sup>

## 2. Economic Rights as Human Rights

Although many of the rights guaranteed by the UDHR and the ECHR overlap, and the latter contains a “Safeguard for existing human rights” which states that “[n]othing in this Convention shall be construed as limiting ... any of the human rights ... which may be ensured [under other existing agreements between parties],” one noticeable difference between the two documents is the lack of an equivalent to the UDHR Article 23 right to work in the ECHR.<sup>71</sup> During the drafting of the UDHR, head of the drafting committee Eleanor Roosevelt parlayed her long-held belief in the importance of labor rights into ensuring that international labor organizations held a prominent role in the document’s development.<sup>72</sup> It is not by mere chance

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<sup>68</sup> Smith explains that “[t]here are divergent views as to the origin of human rights,” with some considering basic rights found as early as the thirteenth century to be “human rights,” while others see the start of human rights law in the late eighteenth century creations of the American Declaration of Independence and the French Declaration of the Rights of Man. Still others would argue that the protection of minorities by the League of Nations and other WWI peace treaties are the true start of human rights law. Smith, *supra* note 11, at 8–10.

<sup>69</sup> U.N., UNIVERSAL DECLARATION OF HUMAN RIGHTS, HISTORY OF THE DOCUMENT, <https://www.un.org/en/sections/universal-declaration/history-document/index.html>.

<sup>70</sup> EQUALITY AND HUMAN RIGHTS COMMISSION, *What is the European Convention on Human Rights* (Apr. 19, 2017), <https://www.equalityhumanrights.com/en/what-european-convention-human-rights#:~:text=Originally%20proposed%20by%20Winston%20Churchill,came%20into%20force%20in%201953>.

<sup>71</sup> Compare G.A. Res. 217 A, Universal Declaration of Hum. Rts. art. 23 (Dec. 10, 1948) with Council of Eur., The European Convention on Human Rights (Sept. 03, 1953).

<sup>72</sup> U.N. Office of the High Commissioner of Hum. Rts: Universal Declaration of Hum. Rts. at 70: 30 Articles on 30 Articles- Article 23 (2015), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23963&LangID=E>.

that the International Labour Organisation (ILO) was one of few parts of the League of Nations that also played a key role in drafting the UN's Declaration; rather, it owes to Mrs. Roosevelt and the inclusion of a American Federation of Labour (AFL) representative in the full-time staff of the UN that workers' rights were considered an indispensable piece of the new peace.<sup>73</sup>

Article 23 guarantees, in four short sentences, that everyone has the right to work freely and in just conditions, the right to equal pay for equal work without discrimination, the right to just remuneration sufficient to ensure “an existence worthy of human dignity,” and the right to collectively bargain in the form of trade unions.<sup>74</sup> The vision of the ILO that was absorbed by the UN was not based solely on ensuring fair labor for its own sake, but on the understanding that “universal, lasting peace can be established only if it is based on social justice.”<sup>75</sup> It was, to them, quite clear that labor rights were part and parcel of human rights, having just witnessed the use of slave labor as one aspect of the most egregious human rights violations known to man.<sup>76</sup>

Two short years later, though, when the Council of Europe set forth its own human rights document, this element was absent.<sup>77</sup> Although trade unionists were in attendance as part of the roughly eight hundred delegates at the 1948 Hague Congress, they likely lacked in relative prominence among the *mélange* of participants that included famous politicians and heads of state, philosophers, poets laureate, and various other cosmopolitans, led by Winston Churchill.<sup>78</sup> Perhaps it is owing to this more obscure position than that of unionists in the first iteration of the

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<sup>73</sup> *Id.*

<sup>74</sup> G.A. Res. 217 A, Universal Declaration of Hum. Rts. art. 23 (Dec. 10, 1948).

<sup>75</sup> U.N. Office of the High Commissioner of Hum. Rts, *supra* note 72.

<sup>76</sup> *Id.*

<sup>77</sup> See Rory O'Connell, *The Right to Work in the European Convention on Hum. Rts.*, EUR. HUM. RTS. L. REV. 176 (2012).

<sup>78</sup> Clarence C. Walton, *The Hague “Congress of Europe”: A Case Study of Public Opinion*, 12 THE WESTERN POLITICAL QUARTERLY 738, 738—40 (1959).

UN that workers' rights were decentered, and not formally recognized in the resulting rights-protecting document.<sup>79</sup>

The post-war liberal institutions with a purely economic focus like the IMF, the European Economic Community (the predecessor to the EU), and the World Bank operate in such a way as to promote a world order in which states retain general autonomy while entering into a sort of shared sovereignty.<sup>80</sup> To accomplish this, they employ a general design of “regulat[ing] policy externalities arising from societal interactions across borders.”<sup>81</sup> By contrast, human rights-focused regimes are primarily aimed at “hold[ing] governments accountable for purely internal activities.”<sup>82</sup>

Perhaps the belief that economic rights are not as serious as human rights (or else their domestic violation would too be the concern of the international community) derives from these operational differences, or perhaps from the exclusion of workers and economic rights from one of the primary human rights documents; regardless, human rights scholarship frequently has the unfortunate viewpoint that “economic freedoms ... [are] not an element of human rights.”<sup>83</sup> In reality, the right to work and its companion protections are vital to the security of human rights: when people cannot work, inequality and instability flourish. Human rights violations are more likely to occur under these conditions than under a fairer economic paradigm.<sup>84</sup>

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<sup>79</sup>See O’Connell, *infra* note 77. O’Connell explains that although the right to work is not found in the ECHR, the European Court of Human Rights has protected some associated elements through case law. *Id.* Still, its absence from the ECHR automatically relegates its worth.

<sup>80</sup> Snyder, *supra* note 14, at 57.

<sup>81</sup> Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 INT’L ORG. 217, 217 (2000).

<sup>82</sup> *Id.*

<sup>83</sup> Dagmar Schiek, *Brexit on the Island of Ireland: Beyond Unique Circumstances*, 69 N. IR. LEGAL Q. 367, 384 (2018). See also Gerald J. Beyer, *Economic Rights: Past, Present, and Future*, in HANDBOOK OF HUM. RTS. 291, 291 (Thomas Cushman ed., 2011).

<sup>84</sup> Lauren Fielder, *Is Nationalism the Most Serious Challenge to Human Rights: Warnings from Brexit and Lessons from History*, 53 TEX. INT’L L.J. 211, 236 (2018).

Thus, it is imperative to acknowledge that socio-economic rights cannot be divorced from human rights conversations without “exacerbate[ing] many of the evils [human rights policies] set out to eradicate.”<sup>85</sup> The frequent absence of economic and labor rights from human rights definitions artificially narrows the field to the detriment of the people whose rights most need protecting, namely those with little social or fiscal capital. To adequately address human rights concerns, we must understand that socio-economic rights are as vital as more obvious rights, like those of freedom from torture or arbitrary detention. By recognizing labor rights as equally important, those interested in maintaining peace, stability, and human rights for all will be better equipped to prevent the human rights atrocities which skulk in the wake of these types of softer rights violations.

### III. European Nationalism Redux

While the liberal institutionist experiment has had success in staving off nationalist surges in Europe,<sup>86</sup> they are now once again on the rise in several areas.<sup>87</sup> Two particularly noteworthy examples are the powerful Hungarian nationalist movement, helmed by the political party Fidesz, and the movement in Great Britain that propelled the idea of Brexit to success.<sup>88</sup> This section will explain first the background of modern Hungarian nationalism, followed by the threats that movement presents to human rights. It will then delineate how Brexit relates to nationalism and how it also threatens human rights, specifically for those living in Northern Ireland.

#### A. Modern Hungarian Nationalism

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<sup>85</sup> Samuel Moyn, *Economic Rights Are Human Rights*, FOREIGN POL’Y (Apr. 9, 2018), <https://foreignpolicy.com/2018/04/09/the-freedom-america-forgot-populism-human-rights-united-nations/>.

<sup>86</sup> Snyder, *supra* note 14 at 57.

<sup>87</sup> See, e.g., Fielder, *supra* note 84 at 218. (“Populist Nationalist Parties have a foothold in Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Latvia, the Netherlands, and Sweden.”)

<sup>88</sup> See *infra* Sections IIIA and IIIB.

Since WWII and the subsequent formation of the EU, there has been relative peace among its member states.<sup>89</sup> As with the other previously described liberal international institutions, the EU (and its forerunner the EEC) seeks to achieve its goal of transnational cooperation by means of “some surrender of sovereignty” by its members in service of a regulatory, rights-protecting supranational organization.<sup>90</sup> While this structure has been seen and promoted as a necessary ingredient in the EU’s ultimate goal of preventing war and human rights abuses, after several decades of success it is now facing significant backlash.<sup>91</sup> Not unlike the nationalist movements of the eighteenth century, today several such camps have gained popularity and political traction globally, largely as a response to widening economic inequality, belief in the decrease of national sovereignty, and, importantly, disruptions to demography and cultural hegemony.<sup>92</sup>

While nationalism has seen a revival and political success all over the world, its surge in Europe in recent years has been particularly widespread.<sup>93</sup> This backlash to the dominant international order became increasingly prominent across the continent in response to international power player Germany’s opening of its borders to a large influx of refugees in 2015.<sup>94</sup> Belgium, the seat of the EU, then applied pressure on other EU member states to alleviate some of the demand on Germany by also accepting migrants.<sup>95</sup> New European nationalism has drawn more attention than similar movements in other parts of the world both because it flies in the face of a

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<sup>89</sup> Fielder, *supra* note 84, at 234. Fielder writes that “there have been 70 years of peace within [the EU’s] member states.” *Id.* However, this assertion ignores the volatility and violence which characterized Northern Ireland during the Troubles.

<sup>90</sup> *Id.* at 225 (quoting Matthias Matthijs, *Europe After Brexit: A Less Perfect Union*, 96 FOREIGN AFF. 85, 87—88 (2017)).

<sup>91</sup> Fielder, *supra* note 84, 224—25.

<sup>92</sup> Fielder, *supra* note 84, at 224 (citing Michael J. Mazarr, *The Once and Future Order: What Comes after Hegemony*, 96 FOREIGN AFF. 25, 28 (2017)).

<sup>93</sup> Fielder, *supra* note 84, at 218, noting that “[n]ationalist [p]arties have a foothold in Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Latvia, the Netherlands, and Sweden.”

<sup>94</sup> Snyder, *supra* note 14, at 58.

<sup>95</sup> *Id.*

supranational order that has seemingly been mostly successful, and because of its British iteration's success in the Brexit referendum.<sup>96</sup> Other than Britain, one particularly representative embodiment of the forces driving European nationalism is Hungary.

### 1. The Nationalist Movement in Hungary

Given its history as a classic site for nationalist sentiment, it should come as no surprise that in the modern wave of nationalism Hungary is and has been a leader. In the 1990s, before Hungary joined the EU, its Fidesz (Young Democrats) party leaned left and did not enjoy significant political power.<sup>97</sup> In response to a poor showing in the 1990 elections, however, Fidesz rebranded itself as the representation of the nationalist right, which led in subsequent elections to greater gains.<sup>98</sup> For Fidesz and its supporters, the Hungarian nation is defined not solely by its territorial borders, but includes the ethnic Hungarians living outside of them.<sup>99</sup> Fidesz has been remarkably adept at transforming the political conversation in Hungary, effectively changing the competition from a left vs. right debate to one “between those forces that represented the nation and those forces that, by extension, did not.”<sup>100</sup> This transition allowed Fidesz to reframe issues to reflect this divide.<sup>101</sup> But interestingly, even with this nationalist agenda, EU membership was generally supported on all sides of the political divide.<sup>102</sup> For a nationalist party, EU membership seems counterintuitive, but for Fidesz's agenda of representing the interests of all ethnic

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<sup>96</sup> Fielder, *supra* note 84, at 217—23. European nationalism likely also commands more attention due simply to Eurocentrism.

<sup>97</sup> Jon E. Fox & Peter Vermeersch, *Backdoor Nationalism*, 51 EUR. J. OF SOCIOLOGY 325, 329 (2010).

<sup>98</sup> *Id.* at 330.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* The authors note that “[s]ocial issues were recast as questions about the welfare of the nation, foreign policy decisions were subordinated to the national interest, and ... the question of European unification was ripe for national framing.” *Id.*

<sup>102</sup> *Id.* at 330—31. The authors note that although all factions supported EU accession based mostly on the institution's market policies, there were still “Euro-enthusiasts and Euro-sceptics” whose beliefs differed in particulars such as timing.

Hungarians, the EU served as a vessel through which it could achieve a “borderless Hungarian nation.”<sup>103</sup>

However, after defeat at the polls in 2002, Fidesz leader Victor Orbán pushed his party further right, rejecting liberalist ideals and blaming his loss on the media and inclusive democracy.<sup>104</sup> Appealing to the cultural memory of former Soviet control over the region, Orbán “depicted Brussels, the site of E.U. headquarters, as ‘the new Moscow.’”<sup>105</sup> Orbán’s newfound disdain for the EU was prescient: years before Belgium would ask EU members to accept migrants, Orbán anticipated their upcoming arrival, and purposefully stoked anti-Muslim prejudice.<sup>106</sup> In the years following Fidesz’s political defeat, Orbán and his ilk also shored up significant support from anti-Semitic and anti-Roma political groups.<sup>107</sup> The coalition of these supporters launched Fidesz back into the majority of the national parliament, with Orbán regaining his role as prime minister in 2010.<sup>108</sup>

## 2. Nationalist Threat to Human Rights in Hungary

With his second election to the post of prime minister, Orbán quickly set out to concentrate and entrench power in himself, using all tools at his disposal to take over Hungarian media and weaken any possibility of a judiciary check, and attacking political critics and any groups receiving funding from outside of Hungary.<sup>109</sup> Orbán has also ramped up anti-immigrant, pro-ethnonationalist sentiment within Hungary to alarming levels.<sup>110</sup> This hostility to immigrants,

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<sup>103</sup> *Id.* at 331.

<sup>104</sup> John Shattuck, *Victor Orbán’s Rise and the Power of Nationalist Politics*, PACIFIC STANDARD (Jan. 14, 2019), <https://psmag.com/social-justice/orbans-rise-to-power-is-a-product-of-nationalism>.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Jaroslav Mihálik, *The Rise of Anti-Roma Positions in Slovakia and Hungary: A New Social and Political Dimension of Nationalism*, 7 BALTIC J. OF L. AND POL. 179, 188 (2014).

<sup>108</sup> *Id.*; See also Shattuck, *supra* note 104.

<sup>109</sup> See, e.g., Shattuck, *supra* note 104.

<sup>110</sup> Mihálik, *supra* note 107, at 188. Mihálik notes the “frequent racism and social intolerance towards minorities” that has drastically risen in both private and political life. *Id.* (citing European Comm’n Against Racism and

minorities, and the EU power structure has gone beyond mere (though still dangerous) rhetoric and manifested in actual policy. Significantly, in 2001, Fidesz sponsored and passed the Status Law, which allowed for Hungarians living beyond the country's borders to apply for Hungarian Identity Cards which granted their holders special access to the Hungarian labor market and other entitlements.<sup>111</sup> Although not inherently anti-minority, this law represented danger in its rejection of EU anti-discrimination and favoritism mandates<sup>112</sup> and delivered a message of Hungarian ethnic superiority. Following pushback from the EU for these reasons, Hungary amended the law by extending its labor provisions to all applicants in neighbor countries but kept in place the Hungarian Identity Cards,<sup>113</sup> effectively removing the international legal barriers while still asserting Hungarian supremacy.

This digression from the liberal institutions which have served as a guard against human rights violations has shown several sides in Hungary of late. The structure of the EU has, somewhat ironically, contributed to rebellion against it. It is not just the requirement that member nations sacrifice some of their sovereign power as a requirement to join that leads some critics to complain it is antidemocratic: there has also been growing discontent among some members about the fact that governance of the EU is left not to elected officials, but to experts.<sup>114</sup> Where the divide between democratically-backed accountability and liberalism becomes too wide, illiberal nationalism has a tendency to rear its head.<sup>115</sup> What is ironic, however, is that the solution (at least in the case of Hungary) is not to assert and ensure increased democracy, but instead to replace

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Intolerance: ECRI Report on Hungary (2009), <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/hungary/HUN-CbCIV-2009-003-ENG.pdf>).

<sup>111</sup>Fox & Vermeersch, *supra* note 97, at 339.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Fielder, *supra* note 84, at 230.

<sup>115</sup> Snyder, *supra* note 14, at 59.

liberalism with authoritarianism.<sup>116</sup> Describing Hungary's trajectory in such a way is no mere exercise in conjecture: in a 2014 speech, Orbán himself asserted that Hungary would no longer be a liberal nation, and instead would become a work-based state in the vein of China, Russia, and Turkey.<sup>117</sup> In the place of democratic liberalism, Orbán envisions a Hungary of "one [party ...] built on 'ethnonationalist foundations.'"<sup>118</sup>

Since then, Orbán has made good on this promise, and Hungary's hostility to minority groups and immigrants has steadily increased. During the 2015 European migrant crisis, almost 400,000 mostly Muslim asylum-seekers crossed the border from Serbia into Hungary.<sup>119</sup> Although a substantial portion of them were only passing through Hungary en route to Germany, which had pledged to take in one million refugees, this large a throng tested the capacity of the smaller and less wealthy state.<sup>120</sup> In response to this incident and generally to the European refugee crisis, Hungary has passed a spate of anti-immigrant policies.<sup>121</sup> One well-publicized such policy was the erection of barbed wire fences around various points of the Hungarian border.<sup>122</sup> Shortly after, Orbán created "transit zones" on the Hungarian-Serbian border, followed by a policy mandating that any asylum-seekers had to apply for that status from such a transit zone, wherein they must remain detained for the entirety of the process.<sup>123</sup>

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<sup>116</sup> Fielder, *supra* note 84, at 218.

<sup>117</sup> *Id.* (citing James Kirchick, *THE END OF EUROPE* 59 (2017)).

<sup>118</sup> Fielder, *supra* note 84 (quoting Kirchick, *supra* note 117, at 60).

<sup>119</sup> Elżbieta M. Goździak, *Using Fear of the "Other," Orbán Reshapes Migration Policy in a Hungary Built on Cultural Diversity*, MIGRATION POL'Y INST. (Oct. 10, 2019), <https://www.migrationpolicy.org/article/orban-reshapes-migration-policy-hungary>.

<sup>120</sup> Elizabeth Zerofsky, *Victor Orbán's Far-right Vision for Europe*, *THE NEW YORKER* (Jan. 7, 2019), <https://www.newyorker.com/magazine/2019/01/14/viktor-orbans-far-right-vision-for-europe>.

<sup>121</sup> Goździak, *supra* note 119.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

Although Orbán has claimed at times that “Hungarians have ‘no problems’ with the local Muslim community,”<sup>124</sup> he has also publicly stated that “Hungarians have ‘the right not to live together with populous Muslim communities.’”<sup>125</sup> Thus, observers of Hungarian policy in recent years are likely to note that, although Viktor Orbán has denied charges of racism and xenophobia,<sup>126</sup> the laws which he and his party have promoted tell a different story. In addition to the more obvious threats to the human rights of minorities and immigrants in Hungary evident from these new laws, there are somewhat subtler tells of Fidesz’s disregard for the human rights-centered post-WWII world order. One interesting example is the 2014 construction, in the midst of the already existing monuments to various points in Hungarian history dotting Budapest’s Freedom Square, of a seemingly innocuous Memorial to the Victims of the German Occupation.<sup>127</sup>

Without context, one would struggle to conjure anyone more worthy of memorialization than the victims of German aggression in WWII. However, the context here is vital: in reality, the entrance of the Nazis into Hungary was less an “occupation” than it was “the unimpeded movement of German soldiers onto friendly territory.”<sup>128</sup> Glossing over this fact (and arguably going beyond that to historical revisionism) ignores the fact that Nazi action in Hungary was both specifically anti-Semitic and actively assisted by the Hungarian state.<sup>129</sup> This disturbing development highlights the very real dangers to human rights presented by Orbán’s reframing of a clearly anti-Muslim policy shift as simply being aimed at the protection of Hungarian culture, customs, and “Christian tradition.”<sup>130</sup>

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<sup>124</sup> *Id.*

<sup>125</sup> *Hungary PM Viktor Orbán: Antagonising Europe Since 2010*, B.B.C. NEWS (Sept. 4, 2015), <https://www.bbc.com/news/world-europe-16390574>.

<sup>126</sup> *Why is Hungary Turning to Nationalism?*, THE ECONOMIST (Apr. 6, 2018), <https://www.economist.com/the-economist-explains/2018/04/05/why-is-hungary-turning-to-nationalism>.

<sup>127</sup> Kirchick, *supra* note 117, at 40—41.

<sup>128</sup> *Id.* at 41.

<sup>129</sup> *Id.*

<sup>130</sup> *Why is Hungary Turning to Nationalism?*, *supra* note 126.

## B. British Nationalism and Brexit

While nationalism has reared its many heads throughout large swaths of the globe as of late,<sup>131</sup> a handful of iterations have garnered significant attention as compared to others. In particular, the media attention to the 2016 election of Donald Trump in the United States need not be recited here, though it is useful to note that Trump himself has compared his election to the Brexit vote, calling it “the exact same thing.”<sup>132</sup> Two years later, in the global south, Jair Bolsonaro was elected President of Brazil, drawing comparisons to Trump<sup>133</sup> and with commentators and scholars noting that many of the extremist tactics taken by Bolsonaro and his supporters are following the playbook utilized by far-right Trump supporters.<sup>134</sup> Even before Trump’s rise in global recognition, the oppressive regimes of Vladimir Putin and Recep Tayyip Erdogan in Russia and Turkey, respectively, exemplified dangerous nationalist agendas in action. For the new European nationalists, though, the most encouraging political development has been the 2016 referendum in Britain to leave the EU, or Brexit.<sup>135</sup> Though it has yet to go into effect, the effects of Brexit have been noticeable even outside of Britain; not long after England’s<sup>136</sup> vote to leave the EU, the newly-developed Nationalist Europe and Freedom Coalition (a group of far-

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<sup>131</sup> While nationalism has until recently been “relatively dormant in Europe, [it] was alive and well elsewhere in the world” in the post-WWII era, as many regions grappled with bringing colonization and its legacies to an end. Fielder, *supra* note 84, at 217.

<sup>132</sup> *Id.* at 222 (quoting Ralf Michaels, *Does Brexit Spell the Death of Transnational Law?*, 17 GER. L. J. 51, 51 (2016)).

<sup>133</sup> See, e.g., *Jair Bolsonaro: Brazil’s Firebrand Leader Dubbed the Trump of the Tropics*, B.B.C. NEWS (Dec. 31, 2018), <https://www.bbc.com/news/world-latin-america-45746013>.

<sup>134</sup> Dom Phillips “*The Playbook is the American Alt-right*”: *Bolsonaristas Follow Familiar Extremist Tactics*, THE GUARDIAN (Jan. 27, 2020), <https://www.theguardian.com/world/2020/jan/27/american-alt-right-playbook-bolsonaro-extremist-tactics-brazil>.

<sup>135</sup> Fielder, *supra* note 84, at 221.

<sup>136</sup> Though the Brexit vote implicates consequences for all of Britain, both Northern Ireland and Scotland voted to remain in the EU. Fielder, *supra* note 84, at 214 (citing Patrick Cockburn, *Brexit Unleashed an English Nationalism That Has Damaged the Union with Scotland for Good*, THE INDEPENDENT (Mar. 17, 2017), <http://www.independent.co.uk/voices/brexit-scottish-referendum-english-nationalism-damaged-union-for-good-a7635796.html>).

right leaders from across the European continent) met two times within one year, and brought attention to the Brexit vote as a success for the nationalist movement.<sup>137</sup>

### 1. Brexit as a Nationalist Success

Any political development which results from a democratic vote is open to interpretation as to its ultimate causes, but the true reasons behind Brexit are particularly elusive, or as one writer describes it, “Brexit is a Rorschach blot into which everybody reads their own preoccupations.”<sup>138</sup> However, even with this lack of consensus, one “universally accepted [interpretation] is that it was a triumph of English nationalism.”<sup>139</sup> One rather modern approach to understanding the myriad reasons that voters in Britain chose to leave the EU,<sup>140</sup> undertaken by researchers from City, University of London, analyzed conversation on the topic on Twitter, and found that roughly seventy-five percent of tweets about Brexit espoused nationalist sentiments.<sup>141</sup> This should come as no surprise, given the origins of Brexit as a concept; undoubtedly, [w]ithout Nigel Farage, there would have been no referendum in the first place.”<sup>142</sup> As far back as 2003, Farage has been attempting to rally the English to leave the EU.<sup>143</sup> In his speech to the European Parliament just

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<sup>137</sup> Fielder, *supra* note 84, at 221—22.

<sup>138</sup> *Brexit and English Nationalism*, THE ECONOMIST (Jan. 30, 2020), <https://www.economist.com/britain/2020/01/30/brexit-and-english-nationalism>.

<sup>139</sup> *Id.*

<sup>140</sup> While voter turnout for the Brexit referendum was rather high (about 72%), turnout among young people (18-24-year-olds, who were much more likely to vote to remain) was quite low, and thus it is a bit of an oversimplification to say that “voters” chose to leave. Jarell Perez, *Voter Turnout and Warning Signs from the UK*, MACE & CROWN NEWS, <https://www.arcgis.com/apps/Cascade/index.html?appid=b59e96164e6d44578acc378b9574d6f>.

<sup>141</sup> Marc Bastos & Dan Mercea, *Parametrizing Brexit: Mapping Twitter Political Space to Parliamentary Constituencies*, 21 INFO., COMM. & SOC’Y 921, 933 (2018).

<sup>142</sup> Robert Colville, *12 People who Brought About Brexit*, POLITICO (June 25, 2016), <https://www.politico.eu/article/12-people-who-brought-about-brexit-leave-remain-referendum-campaign-euroskeptics-tension/>.

<sup>143</sup> Jon Stone, *Nigel Farage Delivers First Post-Brexit Speech to the European Parliament*, INDEPENDENT (June 30, 2016), <https://www.independent.co.uk/news/uk/politics/nigel-farage-brexit-speech-european-parliament-full-transcript-text-a7107036.html>.

after the Brexit vote, Farage left no doubt that nationalism was the driving force behind his campaign, noting that what Brexiteers did was “[reject] the multinationals.”<sup>144</sup>

## 2. Brexit as a Threat to Human Rights

Just as uncertainty regarding Brexit voters’ true motivations abounds, so too does that regarding what its ultimate effects will be. It is reasonable, though, to presume that it will ultimately have a negative effect on human rights. In the lead up to the referendum, Nigel Farage made clear that in addition to his general aversion to multinationalism, his motivations for leading the Brexit charge also laid in wanting to curb immigration into the UK. One highly publicized incident which took place just before the referendum vote involved Farage’s posting of an anti-immigrant poster, featuring almost exclusively non-white asylum seekers with the words “Breaking Point: The EU has failed us all.”<sup>145</sup> This poster was considered so offensive by those without the same sentiments that it was reported to police for inciting racial hatred, in breach of UK race laws.<sup>146</sup> In the time since the Brexit vote, there has been a demonstrable increase in racial discrimination.<sup>147</sup> While, of course, it cannot be said with certainty that the relationship between the Brexit campaign and increased racial violence is one of causation rather than mere correlation, research does suggest that “violent, hateful language *can* inflame people who are already inclined toward violence and focus their rage.”<sup>148</sup>

## 3. Brexit’s Effect on Northern Ireland

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<sup>144</sup> *Id.*

<sup>145</sup> Heather Stewart & Rowena Mason, *Nigel Farage’s Anti-Migrant Poster Reported to Police*, THE GUARDIAN (June 16, 2016), <https://www.theguardian.com/politics/2016/jun/16/nigel-farage-defends-ukip-breaking-point-poster-queue-of-migrants>.

<sup>146</sup> *Id.*

<sup>147</sup> See, e.g., Robert Booth, *Racism Rising Since Brexit Vote, Nationwide Study Reveals*, THE GUARDIAN (May 20, 2019), <https://www.theguardian.com/world/2019/may/20/racism-on-the-rise-since-brexit-vote-nationwide-study-reveals>; *Brexit “Major Influence” in Racism and Hate Crime Rise*, B.B.C. NEWS (June 19, 2019), <https://www.bbc.com/news/uk-wales-48692863>.

<sup>148</sup> Nathan Kalmoe, *Yes, Political Rhetoric Can Incite Violence*, POLITICO (Oct. 30, 2018), <https://www.politico.com/magazine/story/2018/10/30/yes-political-rhetoric-can-incite-violence-222019>.

### i. Civil and Political Rights

Although voters in Northern Ireland voted against Brexit, its consequences will be no less real for them than they are for those in England and Wales who voted in favor of it. Following approximately three decades<sup>149</sup> of violence between Irish nationalists and unionists, as well as the English,<sup>150</sup> the “high point and provision culmination of a ‘peace process’” finally occurred with the 1998 signing of the Good Friday Agreement (GFA).<sup>151</sup> Although some have attempted to diminish the importance of EU membership in the development of the GFA, common membership of Ireland and the UK is explicitly referenced in all three strands of the GFA’s plan for governance and cooperation.<sup>152</sup> So important was EU membership to the peace process that the GFA ends with a wish to “develop still further the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Union.”<sup>153</sup> Also significant is the fact that within the UK-Ireland International Agreement to which the GFA was annexed is the provision that any change in the status of Northern Ireland would legally require the consent of the majority of the people therein.<sup>154</sup> Although to most observers leaving the EU would intuitively be deemed a “change in the status” of Northern Ireland, the UK Supreme Court has rejected this proposition.<sup>155</sup> Over fifty-five percent of voters in Northern Ireland elected to remain in the EU.<sup>156</sup> As the UDHR specifically codifies the right “to take part

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<sup>149</sup> Or centuries longer, depending on how one looks at the conflict. *See, e.g.,* Rowan McGreevy, *A History of Ireland for Outsiders: From Henry VIII to the Troubles*, THE IRISH TIMES (Mar. 6, 2019), <https://www.irishtimes.com/news/ireland/irish-news/a-history-of-ireland-for-outsiders-from-henry-viii-to-the-troubles-1.3816898>.

<sup>150</sup> *See, e.g.,* PATRICK RADDEN KEEFE, *SAY NOTHING: A TRUE STORY OF MURDER AND MEMORY IN NORTHERN IRELAND* (2018).

<sup>151</sup> Schiek, *supra* note 83, at 373 (citation omitted).

<sup>152</sup> *Id.* at 375.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 376.

<sup>156</sup> *Id.*

in the government of [one's] country, directly or through freely chosen representatives," and states that "[t]he will of the people shall be the basis of the authority of government,"<sup>157</sup> the UK's disregard of Northern Irish will concerning EU membership arguably already violates international human rights law.

## ii. Threats to the Peace Process and Bodily Safety

Considering the global optimism about the effects of the GFA in bringing about peace in a region plagued for too long by constant conflict, it is only to be expected that what Brexit would mean for Northern Ireland would be of such importance as to be referred to simply as "The Irish Question." The most obvious danger which Brexit presents for those in the six counties of Northern Ireland is the uncertainty regarding the border between Northern Ireland and the Republic of Ireland.<sup>158</sup> Though this question is yet to be answered conclusively, Britain has made quite clear that after Brexit goes into effect, "there will be no free movement of persons into the UK."<sup>159</sup> As the Republic has made no indication of its own plans to leave the EU, this presents a clear problem, in that it is difficult to see how this policy could be implemented absent a border between the Republic and Northern Ireland, of which the Republic has stated it is not in favor as well.<sup>160</sup> Even if the once heavily militarized border could be avoided through use of modern border technology, any border at all is likely to dredge up past trauma related to the violence of the Troubles for the people of Northern Ireland.<sup>161</sup>

This psychological trauma is not the only danger posed by "The Irish Question" and its potential solutions. Although the GFA helped usher in increased stability in the region and

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<sup>157</sup> G.A. Res. 217 A, *supra* note 71.

<sup>158</sup> Jen Kirby, *Britain's Irish Border Problem, Explained*, VOX (Feb. 18, 2019), <https://www.vox.com/world/2019/2/18/18204269/brexit-irish-border-backstop-explained>.

<sup>159</sup> Schiek, *supra* note 83, at 385.

<sup>160</sup> *Id.*

<sup>161</sup> Cathy Gormley-Heenan and Arthur Aughey, *Northern Ireland and Brexit: Three Effects on the Border in the Mind*, 19 BRIT. J. OFF. POL. AND INT'L REL. 497 (2017).

significantly less violence, tensions between Northern Irish nationalists, or republicans, and unionists remains high. Just last year, a familiar sound pierced the precarious peace of Derry when a car bomb exploded outside of a courthouse.<sup>162</sup> Though luckily nobody was injured by the blast, it served as a stark reminder that the peace represented by the GFA is fragile.<sup>163</sup> A reversion to conflict is gravely dangerous to any human rights guarantees: it is nearly uncontested that “violent conflict causes human rights abuses.”<sup>164</sup> Those human rights violations in turn frequently lead their victims and victims’ allies to oppose the state apparatus, usually by violent means.<sup>165</sup> Northern Ireland is certainly no exception. Throughout the Troubles, England routinely committed what are rightfully considered human rights violations, including indefinite detentions as well as the highly publicized torturous treatment of sisters Dolours and Marian Price, who were force-fed while committing a hunger strike in a British prison after being imprisoned for their roles in a scheme to set off several bombs throughout London.<sup>166</sup> The pain and degradation faced by the Price sisters in being force-fed was so great, and so publicly abhorred, that eventually the British government calculated that it was not worth the negative public reaction nor the physical hassle to continue the practice.<sup>167</sup> Following the conclusion of the Price sisters’ hunger strike, the World Medical Association declared that force-feeding was unethical.<sup>168</sup> Many activists concerned about civil and human rights during this period argued that the practice being labeled unethical rendered it torture, in contravention of UDHR Article 5.<sup>169</sup>

### iii. Economic Human Rights

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<sup>162</sup> Kirby, *supra* note 158.

<sup>163</sup> *Id.*

<sup>164</sup> Fielder, *supra* note 89, at 235.

<sup>165</sup> *Id.* at 236.

<sup>166</sup> *See generally* Radden Keefe, *supra* note 150.

<sup>167</sup> *Id.* at 157.

<sup>168</sup> *Id.* at 185.

<sup>169</sup> Ian Miller, A HISTORY OF FORCE FEEDING: HUNGER STRIKES, PRISONS AND MEDICAL ETHICS, 1909-1974 203–04 (2016).

The more complete understanding of human rights which includes economic and labor dimensions further clarifies that Brexit will reduce human rights protections for those living in Northern Ireland. One key aspect of the GFA is the establishment of institutions meant to foster cross-border cooperation between Northern Ireland and the Republic.<sup>170</sup> With the uncertainty surrounding trade and labor relations once the UK exits the EU, it is unclear whether these institutions will be able to continue operating in such a way as to satisfy the mandates of the peace deal. Specifically, although most Northern Irish employers are based there or in Britain, about thirteen percent of Northern Irish *employees* work for firms owned elsewhere, with a significant share of those being in the Republic.<sup>171</sup>

In the area of trade, again, uncertainty prevails: because of the position of the island of Ireland on the western edge of the UK, Northern Ireland will face issues relating to trade in goods with the rest of the EU, as well as with the Republic.<sup>172</sup> Even those residents whose jobs will not immediately be affected by the deal will lose their current free access to employment within the EU, once they are removed from its market.<sup>173</sup> Additionally, Northern Ireland has received over £600 million annually in EU funding, allocated to farming, research, and jobs, among other initiatives.<sup>174</sup> While a loss of economic viability in itself should be deemed a human rights issue, economic inequality and lack of opportunity was a significant cause of the Troubles<sup>175</sup>, and the fragile peace will again be threatened should these economic conditions return.

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<sup>170</sup> Paul Macflyn, *The Economic Implications of BREXIT for Northern Ireland*, NEVIN ECON. RSCH. INST. 1, 24 (2016).

<sup>171</sup> *Id.* at 21.

<sup>172</sup> Schiek, *supra* note 83, at 380.

<sup>173</sup> *Id.*

<sup>174</sup> Jonathan Bell, *What has EU Done for Northern Ireland? Interactive Map Details £600million Pumped in Projects*, BELFAST TELEGRAM (Sept. 11, 2018), <https://www.belfasttelegraph.co.uk/news/brexit/what-has-eu-done-for-northern-ireland-interactive-map-details-600million-pumped-in-projects-37305103.html>.

<sup>175</sup> See, e.g. Ed Cairns & John Darby, *The Conflict in Northern Ireland: Causes, Consequences, and Controls*, 53 AM. PSYCHOLOGIST 754, 755 (1998).

#### IV. The Case for Northern Irish Nationalism

Like nationalist movements in general, Northern Irish nationalism is difficult to fully define and thus its origins are difficult to pinpoint. However, its modern incarnation originated in the late eighteenth century.<sup>176</sup> Similar to some other movements, the basis for this Irish nationalism lay in ideals of individual rights à la the Enlightenment, and the idea that such ideals could most readily be achieved through national popular sovereignty.<sup>177</sup> In its original form, Irish nationalism was inclusive, rather than cleaved according to a Catholic/Protestant divide, and its main target was overcoming political repression.<sup>178</sup> Eventually, Irish nationalists did come into conflict with unionists who wanted to remain under British rule, almost exclusively along divided religious lines.<sup>179</sup> In the twentieth century, Irish nationalism ebbed and flowed in vehemence, but underlying all phases was one belief: that Britain's rule over the North was illegitimate as Britain was an occupying imperialist force, and because of this it was the Irish "duty to expel them by any means necessary."<sup>180</sup>

This section will provide a brief background of another important nationalist movement, that of India, which successfully expelled British rule after nearly a century of imperial

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<sup>176</sup>Kathleen Nutt & Peter Gray, *Re-thinking Irish Nationalism: Identity, Difference and the Northern Conflict*, 83 AN IRISH Q. REV. 7, 7 (1994).

<sup>177</sup> *Id.* at 8.

<sup>178</sup> *Id.*

<sup>179</sup> *See, e.g., id.* at 11, which points out that although religion defined the chasm, Protestant unionists were primarily concerned with maintaining social and political privilege, rather than with religious animosity for its own sake. Of course, Irish Nationalism has fallen under some of the familiar pitfalls of nationalist movements in general, e.g., othering Britain and Protestantism and tending to demonize them. *See* Nutt & Gray, *supra* note 176, at 14 ("The oppositional language of traditional Irish nationalism may be seen in the images of Ireland and Britain which it has presented. Whereas Britain has been depicted as bad, male and urban, Ireland has been depicted as virtuous, female and rural. . . . [S]uch images . . . hinder dialogue between those in Northern Ireland who identify with British national identity and those who identify with Irish national identity.") Nutt & Gray point out, however, that a shift toward "restructuring the opposition" such that Northern Ireland might achieve independence has been underway, and that it "owes much to the internationalization that followed accession to the European Community." *Id.*

<sup>180</sup> *See* Radden Keefe, *supra* note 150, at 2.

domination.<sup>181</sup> It will then explain what “success” could entail for today’s nationalists in Northern Ireland, and how that success could thwart the negative consequences of Brexit.

#### A. Nationalism in India

The sun never sets on the British Empire. So the old adage went.<sup>182</sup> While they might develop triteness with overuse, clichés do not become such for no reason, and this one is no exception. At its zenith, the British Empire spanned approximately twenty-five percent of the globe.<sup>183</sup> Although English conquest began much closer to home,<sup>184</sup> the “epicentre” of the Empire at its height, and its base for continuous expansion throughout Asia, was India.<sup>185</sup> Unlike in Wales, Ireland, and Scotland, British rule over India was not initially an outright assertion of political rule.<sup>186</sup> Rather, the British Crown granted charters for the East India Company which included traditional government responsibilities like security for sea routes, running mints, raising armies, and administering civil and criminal justice.<sup>187</sup> Then, with continuous trade monopolization and expansion, the East India Company eventually took control of the nation itself.<sup>188</sup>

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<sup>181</sup> ENCYCLOPEDIA BRITANNICA: BRITISH RAJ (2020). Of course, this timeline refers only to the period of *direct* British rule over the Indian subcontinent. In reality, the British had control over India in the form of Company Rule by the East India Company since the Battle of Plassey 100 years earlier. *See, e.g.*, Sudipta Sen, A DISTANT SOVEREIGNTY: NATIONAL IMPERIALISM AND THE ORIGINS OF BRITISH INDIA (2002); Ian St. John, THE MAKING OF THE RAJ: INDIA UNDER THE EAST INDIA COMPANY (2012).

<sup>182</sup> The economist Peter Hammond argues that the adage is still true, thanks to (disputed) British control of the Chagos Islands and of the Pitcairn islands. Joshua Keating, *Technically, the Sun Still Never Sets Over the British Empire*, FOREIGN POL. (July 23, 2013), <https://foreignpolicy.com/2013/07/23/technically-the-sun-still-never-sets-over-the-british-empire/>.

<sup>183</sup> *How Big was the British Empire and Why Did it Collapse?*, THE WEEK (Nov. 26, 2019), <https://www.theweek.co.uk/history/93820/british-empire-how-big-was-it-and-why-did-it-collapse>.

<sup>184</sup> David Armitage, *Making the Empire British: Scotland in the Atlantic World 1542-1707*, 155 PAST AND PRESENT 34, 39 (1997). (“Henry VIII’s parliamentary claim to empire ... can be linked to the two acts of Union that incorporated Wales into the English crown between 1536 and 1543, to the Irish parliament’s declaration in 1541 that Henry VIII was ‘King of Ireland,’ rather than merely its ‘lord,’ and finally, to English aggression against the Scots in the 1540s.”) (citation omitted).

<sup>185</sup> *How Big was the British Empire and Why Did it Collapse?*, *supra* note 183.

<sup>186</sup> Sen, *supra* note 181 at xiv.

<sup>187</sup> Sen, *supra* note 182 at xiv.

<sup>188</sup> Khadraoui Amina, *Gandhi’s Nationalist Movement (1920-1947): A Non-Violent Path towards Independence 2* (2016) (M.A. dissertation, University of Tlemcen).

Following the Battle of Plassey in 1757, in which the East India Company defeated an army of 50,000 with only 3,000 of its own soldiers, the Company parlayed its spoils into still further expansion.<sup>189</sup> Under the East India Company's rule (Company Raj),<sup>190</sup> Indians were precluded from holding office in their own country,<sup>191</sup> and although human rights language as we know it was not yet used,<sup>192</sup> this prohibition and some other conditions for Indians living under Company Raj<sup>193</sup> would today likely be considered human rights violations. Eventually, the abuses by the Company government brought about a mutinous backlash.<sup>194</sup> As a result, the British government restructured its hold on India such that it now had direct control rather than through the Company proxy.<sup>195</sup> Although this was "intended to increase Indian participation in governance, ... the powerlessness of Indians to determine their own future without the consent of the British led to an increasingly adamant national independence movement."<sup>196</sup>

Many people today have a simplistic perception of the nationalist movement in India.<sup>197</sup> In reality, Indian nationalism had much deeper roots, and wider branches. As far back as the aftermath of the 1857 mutiny, when ordinary Indians saw their royals prove largely useless, they too began to trade historical ideals of natural monarchies for a more western democratic vision and

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<sup>189</sup> Kallie Szczepanski, *The British Raj in India*, THOUGHTCO (Jan. 28, 2020), <https://www.thoughtco.com/the-british-raj-in-india-195275>.

<sup>190</sup> Barbara Metcalf & Thomas Metcalf, *The East India Company Raj, 1772-1850*, in *A CONCISE HISTORY OF MODERN INDIA* 56 (3<sup>rd</sup> ed. 2012).

<sup>191</sup> Szczepanski, *supra* note 189

<sup>192</sup> See discussion, *supra* note 68.

<sup>193</sup> Colin Alexander, *Colonialism in India was Traumatic – Including for Some of the British Officials who Ruled the Raj*, THE CONVERSATION (Aug. 11, 2017), <https://theconversation.com/colonialism-in-india-was-traumatic-including-for-some-of-the-british-officials-who-ruled-the-raj-77068>. (“[C]olonial subjects ... suffered poverty, malnutrition, disease, cultural upheaval, economic exploitation, political disadvantage, and systematic programmes aimed at creating a sense of social and racial inferiority.”)

<sup>194</sup> ENCYCLOPEDIA BRITANNICA, *supra* note 181.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> See, e.g., *How Big was the British Empire and Why Did it Collapse?*, *supra* note 185. (“In 1947 India became independent following a nonviolent civil-disobedience campaign spearheaded by Mahatma Gandhi.”)

an increase in nationalism.<sup>198</sup> And while Gandhi has come to represent the lone figurehead of Indian nationalism, the “the movement is perhaps one of the best examples of ... and extremely wide movement with a common aim” which had “galvanized millions of people of all classes and ideologies into political action and brought to its knees a mighty colonial empire.”<sup>199</sup> Perhaps most significantly, Indian nationalists had their sights set on introducing representative government and expanded franchise, a free press, and free expression and association.<sup>200</sup>

## B. Political Success for Irish Nationalists

Although the GFA brought to an end the days of rampant violent rebellion by the Irish Republican Army (IRA) and the related Provisional IRA (Provos), this did not spell the end of nationalist sentiment on the island. Probably the most representative figure of its transformation is Gerry Adams. Throughout the Troubles, Adams was known as not just a member of the IRA, but a veritable leader of the illicit group.<sup>201</sup> In 1983, however, Adams was elected to Parliament as a member of the Sinn Fein party.<sup>202</sup> This served as a powerful example of the transition of many Irish nationalists from their roots to players in the political game, who saw more of an opportunity to advance their agenda by way of Parliament than car-bombs.<sup>203</sup> However, there is no question that Sinn Fein is an extension of the republicans of the past; in one particularly telling moment, while Adams gave a speech, a man in the crowd shouted to him to “bring back the IRA,” to which Adams cheekily replied, “they haven’t gone away you know.”<sup>204</sup> After the signing of the GFA, by which many Irish republicans felt betrayed at the perceived capitulation to continued British

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<sup>198</sup> ENCYCLOPEDIA BRITANNICA, *supra* note 181.

<sup>199</sup> BIPAN CHANDRA ET AL., 1–2 INDIA’S STRUGGLE FOR INDEPENDENCE: 1857-1947 (1988).

<sup>200</sup> *Id.* at 3.

<sup>201</sup> See Radden Keefe, *supra* note 150.

<sup>202</sup> *Id.* at 203.

<sup>203</sup> *Id.* at 204.

<sup>204</sup> David McKittrick, *IRA Has Not Gone Away, Adams Warns Ministers IRA Has Not Gone Away*, INDEPENDENT (Aug. 14, 1995), <https://www.independent.co.uk/news/ira-has-not-gone-away-adams-warns-ministers-ira-has-not-gone-away-1596152.html>.

rule, Adams was quick to point out that what he and Sinn Fein had agreed to was not capitulation, but a peace deal based on consent, which allowed for the North to unite with the Republic at any point when a majority of Northerners would vote to do so.<sup>205</sup> The deal was meant not as the end of the struggle, but just as the end of one chapter of it, still aimed at ““deliver[ing] the end of British rule in [Ireland].””<sup>206</sup>

### 1. Protection Against Brexit

It is this consent which could be the key to protecting against the threats to human rights that Brexit represents. As the modern leg of Irish nationalism, Sinn Fein’s policies serve as a good marker for the possible alternative to the grim future that continued British rule and leaving the EU could create. Sinn Fein has made clear that it does not support the no-deal Brexit which looms, as the only way it would approve of Brexit would be if Northern Ireland was given a special status in negotiations with the EU.<sup>207</sup> Because Britain has yet to proffer any realistic solutions for the protection of Northern Ireland, Sinn Fein party leader Mary Lou McDonald has stated that she believes it is time for a new vote on reunification with the Republic, as per GFA protocols.<sup>208</sup> In itself, this course of action would negate the threats to the civil and political rights which Brexit threatens, but by extension of the vote’s outcome it would also protect the threatened economic rights. Furthermore, it would remove the possibility of a reintroduction of a hard border on the Island, eliminating the chance of this leading to renewed conflict at the dangerous levels seen for the three decades of the Troubles.

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<sup>205</sup> Radden Keefe, *supra* note 150, at 224.

<sup>206</sup> *Id.* at 225.

<sup>207</sup> SINN FEIN: BREXIT, <https://www.sinnfein.ie/brexit>.

<sup>208</sup> Rory Carroll, *Brexit: Ireland Needs to Press for Reunification Vote, says Sinn Fein*, *The Guardian* (Oct. 1, 2020), <https://www.theguardian.com/politics/2020/oct/01/brexit-ireland-press-reunification-vote-sinn-fein-mary-lou-mcdonald>.

Like the nationalist movement in India, a revived Northern Irish nationalist movement could rally its highly variant political factions around the common cause of ending British control, in the name of democratic ideals and human rights protection<sup>209</sup>.

## V. Conclusion

The term “nationalism” has been construed too broadly, disregarding the nuances and even significant differences between different nationalist movements.<sup>210</sup> This generalization has caused a consensus that nationalism threatens human rights.<sup>211</sup> But it is reductionist, and does not accurately reflect the differences between different nationalist movements which deserve highlight. From only three examples of modern nationalist movements, it is abundantly clear that this one term is insufficient to describe such varied political movements. Thus, it is true that Hungarian nationalism and British nationalism are likely to diminish human rights, while it is a fallacy to suggest the same about Irish nationalism, which does not share the same xenophobic roots and which does not have the same goals.

<sup>1</sup> Although it is beyond the scope of this paper, another interesting facet of human rights which presents an interesting aspect of the Northern Irish struggle is minority language rights. As Nutt & Gray aptly point out, the common nationalist boogey-men of xenophobia and ethnic discrimination often arise from “the suppression of national identities by imperialist states” rather than “’atavistic’ antagonisms.”<sup>212</sup> Like economic rights, language rights are a component of human rights that is often excluded from discussion.<sup>213</sup> Language rights in the context of human rights

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<sup>210</sup> See Perry, *supra* note 25; Snyder, *supra* note 14; Smith, *supra* note 11.

<sup>211</sup> Fielder, *supra* note 84.

<sup>212</sup> *Supra* note 176 at 17.

<sup>213</sup> See, e.g., Stephen May, *Language Rights: The Forgotten Dimension of Human Rights*, in HANDBOOK OF HUMAN RIGHTS 311 (Thomas Cushman ed., 2011).

centers not on the right to speak a minority language in one’s private sphere (a right already subsumed within existing fundamental human rights), but instead with “the right to maintain and use that particular language in the public, or civic realm – most often in . . . education.”<sup>214</sup> In Northern Ireland, language rights play a key role in the nationalist fight.<sup>215</sup> While in recent years, both Wales and Scotland have achieved legislative success at protecting their language rights, an equivalent right in Northern Ireland has reached an impasse.<sup>216</sup> A full fifteen years after the St. Andrews Agreement was signed, whereby the British government agreed to introduce legislation known as the Irish Language Act, its passage remains unfulfilled.<sup>217</sup> This Act would reverse some of the dangers to minority rights to which numerous international rights-based organizations have called attention, by providing for official recognition of the Irish language, creating a duty for public authorities to make Irish-language materials available in public services, repeal the Administration of Justice Act that mandates the use of English only in judicial proceedings, and crucially, creates a duty on the Department of Education to facilitate use of the language in the education system.<sup>218</sup> While this Act has been proposed for over a decade and allegedly has support from many sides,<sup>219</sup> it remains to be passed, with arguments against it levelling, *inter alia*, that it would unfairly give Irish a place above other languages, that it would threaten the “Britishness” of the North, and that it would cause discrimination against Northern Irish unionists.<sup>220</sup> Language

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<sup>214</sup> *Id.* at 311.

<sup>215</sup> Timothy Jacob-Owens, *A Breakthrough for Language Rights in Northern Ireland*, OXFORD HUMAN RIGHTS HUB (Feb. 18, 2020), <http://ohrh.law.ox.ac.uk/a-breakthrough-for-language-rights-in-northern-ireland/>.

<sup>216</sup> *Id.*

<sup>217</sup> Éanna Ó Caollaí, *Explainer: Breaking the Deadlock Over an Irish Language Act*, THE IRISH TIMES (Jan. 9, 2020), <https://www.irishtimes.com/news/ireland/irish-news/explainer-breaking-the-deadlock-over-an-irish-language-act-1.4135275>.

<sup>218</sup> Jacob-Owens, *supra* note 215.

<sup>219</sup> *Id.*

<sup>220</sup> Ó Caollaí, *supra* note 217.

rights in Northern Ireland, however, are just another example of a demonstrable way in which nationalist political success could protect human rights in the region.

What these various case studies in nationalism make clear is that it is important to better understand the differences in political movements, so as not to succumb to the valid criticism of failing to understand them fully before condemning them. Thus, it would be helpful for conversations around nationalism to center the Irish case as a means to exemplify that nationalism does not inherently contravene human rights, so that it becomes easier to recognize the instances of nationalism that do.