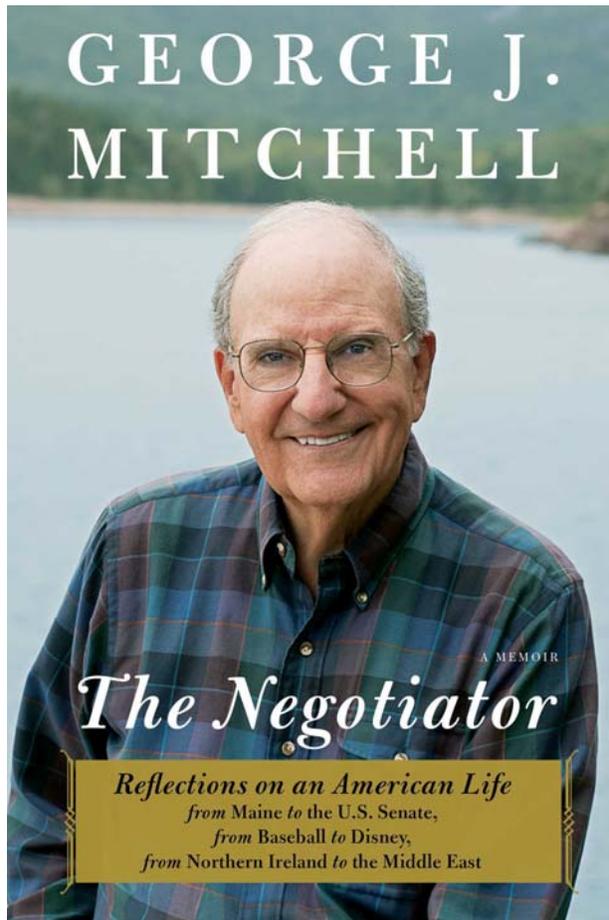




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The Negotiator



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SPEAKER BIOGRAPHY

SENATOR GEORGE MITCHELL has had a long and distinguished career in public service. Senator Mitchell was appointed to the United States Senate in 1980 to complete the unexpired term of Senator Edmund S. Muskie, who resigned to become Secretary of State. In 1982 he was elected to a full term in a stunning come-from-behind victory, and re-elected in 1988 with 81 percent of the vote—the largest margin in Maine history. Senator Mitchell left the Senate as the Senate Majority Leader, a position he held from January 1989 through 1995.

Senator Mitchell enjoyed bipartisan respect during his tenure. It has been said "there is not a man, woman or child in the Capitol who does not trust George Mitchell." For six consecutive years he was voted "the most respected member" of the Senate by a bipartisan group of senior congressional aides.

During his Senate career, Senator Mitchell served on the Finance, Veterans Affairs, and Environment and Public Works Committees. Some of the Senator's most notable initiatives included the 1990 reauthorization of the Clean Air Act, including new controls on acid rain toxins; the nation's first child care bill; and the low-income housing tax credit program. Senator Mitchell was instrumental in the passage of the Americans with Disabilities Act, the passage of higher education bills that expanded opportunities for Americans, opening world markets by leading the effort to ratify the North American Free Trade Agreement, and the creation of the World Trade Organization.

Senator Mitchell left the Senate in 1995 and served President William J. Clinton on several efforts including the Northern Ireland Peace Talks which resulted in the Good Friday Agreement, a landmark accord ending decades of conflict in Northern Ireland. In recognition of his peace-making efforts, Senator Mitchell received numerous honors including the Presidential Medal of Freedom. In 2000, he served as Chairman of an International Fact-Finding Committee on violence in the Middle East. In 2006 and 2007, Senator Mitchell led the investigation into the use of performance-enhancing drugs in Major League Baseball; served as Chairman of the Special Commission Investigating Allegations of Impropriety in the Bidding Process for the Olympic Games; and was the Independent Overseer of the American Red Cross Liberty Fund, which provided relief for September 11 attack victims and their families.

Senator Mitchell served as Chairman of the global board for the law firm DLA Piper and is now Chairman Emeritus; Chairman of the board of directors of The Walt Disney Company; a member of the board of the Boston Red Sox; and a director of several companies such as Federal Express and Staples. He is the author of five books. The most recent, a memoir entitled *The Negotiator: Reflections on an American Life*, was published in May 2015.

Senator Mitchell received an undergraduate degree from Bowdoin College and a law degree from the Georgetown University Law Center. He served in Berlin, Germany, as an officer in the US Army Counter-Intelligence Corps from 1954 to 1956. From 1960 to 1962, he was a trial lawyer in the Justice Department in Washington, DC. From 1962 to 1965, he served as executive assistant to Senator Edmund S. Muskie. In 1965, he returned to Maine, where he engaged in the private practice of law in Portland until 1977. He was then appointed US attorney for Maine, a position he held until 1979, when he was appointed US District Judge for Maine. He resigned that position in 1980 to accept appointment to the US Senate.

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GETTING TO PEACE: AVOIDING ROADBLOCKS ON THE PATH TO PEACE IN NORTHERN IRELAND

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I. Introduction

Negotiations¹ between Nationalists, Unionists, and the governments of Ireland and Great Britain culminated with the Good Friday Agreement (GFA), reached on April 10, 1998.² Although the GFA is not the first peace *2 pact made in Northern Ireland, it offers the best opportunity for peace in a generation.³ However, the path to peace in Northern Ireland is strewn with contentious issues and the negotiators' angry constituencies.⁴ In order to prevent the GFA from collapsing, the parties must prevent positional bargaining from destroying the gains made thus far under the agreement. This Article applies the analysis suggested by Fisher and Ury in Getting to Yes⁵ (GTY) to the GFA and decommissioning.⁶ Although GTY is a negotiation paradigm, it is applicable to the GFA because it is a non-binding mediated *3 agreement requiring further negotiations to ensure implementation. Post-GFA negotiations focused on decommissioning. Consequently, a "negotiating minuet" developed between Republicans and Unionists that required delicate political negotiations to avoid the GFA's demise and a resumption of hostilities.⁷ Therefore, GTY analysis and the use of principled negotiation may be useful in removing roadblocks from the path to peace in Northern Ireland.⁸

II. Historical Context

A brief discussion of the historical context of Ireland's present political conflict is useful in applying GTY analysis as it facilitates understanding of the context within which the negotiators are operating. Ireland's present geo-political configuration resulted from a 1922 division of Ireland.⁹ The northern six counties of Ulster were composed of a Protestant majority governed by Great Britain.¹⁰ The southern twenty-six counties became self-governed by a Catholic majority, and subsequently enacted a Constitution in 1937 to become the Republic of Ireland.¹¹ However, Ireland cannot be neatly divided into Protestant Northern Ireland and the Catholic South.¹² Friction between Catholic minorities and the Protestant majority in Northern Ireland resulted in thirty years of political violence.¹³ Northern Ireland has experienced "the Troubles" ever since civil rights conflicts erupted in 1969.¹⁴

The conflict in Northern Ireland is primarily between the Unionists and the Republicans.¹⁵ Essentially, the Unionists or Loyalists are Protestants of *4 Northern Ireland who wish to maintain a union with Great Britain.¹⁶ Republicans and Nationalists are Catholics from both Northern Ireland and the Republic of Ireland who wish to unify the thirty-two counties of Ireland, thereby eliminating British control in Northern Ireland.¹⁷ This political tension is largely responsible for the violence in

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Northern Ireland.¹⁸ Unlike the American two-party system, nationalism and unionism further sub-divide into myriad political parties representing various points along the Irish political continuum.¹⁹ However, this paper primarily focuses on the contradiction between Unionists and Republicans.

In addition to the various Irish political parties, there are a variegated assortment of paramilitary groups involved in the conflict.²⁰ The Irish Republican Army (IRA) is the most renowned.²¹ The IRA maintained a thirty-year paramilitary campaign for the purpose of unifying the thirty-two counties of Ireland and ending British rule in Northern Ireland.²² Like Nationalist political parties, there are various factions of Republican paramilitary groups.²³ There are various Loyalist paramilitary groups as well.²⁴ Both Republican and Loyalist paramilitary groups have committed terrorist acts *5 against governments, political leaders, opposing paramilitary groups, civilians, and sometimes their own members and supporters.²⁵

Great Britain governs Northern Ireland, and has thus been the object of Republican political violence.²⁶ Much of the terrorism was directed at the British military presence in Northern Ireland and the Royal Ulster Constabulary (RUC), the Protestant-dominated police force of Northern Ireland.²⁷ The British and the RUC responded in-kind to Republican paramilitary violence.²⁸ Loyalist paramilitary activities have also fueled Republican animosity.²⁹ This thirty-year cycle of violence has imposed great human and capital costs, and has outlived several attempts to resolve the dispute.³⁰

A. The Good Friday Peace Agreement

The GFA “represents the product of perhaps the most intensive negotiations ever seen in [Ireland], involving nationalists and Unionists, Loyalists and Republicans.”³¹ The peoples of Ireland and Northern Ireland resoundingly endorsed the GFA in a referendum held on May 22, 1998.³² This referendum paved the way for the first election of Northern Ireland's newly created 108 member Assembly on June 25, 1998.³³ Consequently, legislation established pursuant to the GFA replaced the settlement of 1920-21.³⁴

The GFA is a comprehensive but intentionally vague document.³⁵ Negotiators *6 based the GFA on “the principles of self-determination and consent” to avoid a settlement that would threaten either side.³⁶ Both Unionists and Republicans made many concessions, and the GFA contained agreements concerning: constitutional issues, an elected Assembly for Northern Ireland, a North-South Ministerial Council, a British-Irish Council, Civil Rights, decommissioning of paramilitary weapons, withdrawal of the British military from Northern Ireland, police reform, and the release of paramilitary prisoners.³⁷ The GFA is fragile because its intricate web of concessions may be unable to support prolonged disagreement.³⁸ The fact that the GFA “sits no better with hardline Republicans than it does with hardline Loyalists,” in conjunction with the GFA's ambiguity, may contribute to its ultimate failure.³⁹

Decommissioning has been, and continues to be, the most difficult aspect of the GFA to implement.⁴⁰ Irish Prime Minister Bertie Ahern said that “progress on decommissioning will play a vital role in building up the trust crucial to making the Good Friday agreement effective.”⁴¹ Most post-GFA disputes revolved around decommissioning.⁴²

*7 The peace process meandered precariously for nearly two years after the GFA was endorsed in public referendums.⁴³ This malaise required a jump-start in the Fall of 1999.⁴⁴ Thus, **George Mitchell**, the GFA broker, returned to Northern Ireland

to get the parties back to the table.⁴⁵ Mitchell's presence helped bring the **negotiators** back to the table and paved the way for major new developments in the peace process.⁴⁶ Unionist leader David Trimble helped break the stalemate by taking a political gamble that provided Unionist support for allowing Sinn Fein to participate in the Northern Ireland Executive prior to decommissioning.⁴⁷ The IRA responded in-kind by naming a representative to the Independent International Commission on Decommissioning (IICD) chaired by retired Canadian General John de Chastelain.⁴⁸ The Mitchell Review and subsequent events have brought Northern Ireland closer to a sustained peace. Nonetheless, decommissioning can still implode the GFA.⁴⁹

III. Fisher & Ury's GTY Analysis for Principled Negotiations: Positional versus Principled Negotiations

***8 Fisher and Ury suggest that the best agreements are wise, efficient, and improve, or at least do not adversely affect, the parties' relationship.⁵⁰ Furthermore, they assert that principled bargaining is better designed to reach wise, efficient, and relationship-building (WERB) agreements than positional bargaining.⁵¹ Positional bargaining exists when "[e]ach side takes a position, argues for it, and makes concessions to reach a compromise."⁵² Positional bargaining hinders WERB agreements for several reasons.**

First, positional bargaining tends to produce unwise agreements because adopting and protecting positions minimizes the parties' ability to explore their interests in a manner that could make agreement more likely.⁵³ Thus, any agreement may reflect a mechanical splitting of the difference rather than a solution crafted to meet the parties' legitimate interests, thereby resulting in a less satisfactory agreement.⁵⁴ Second, positional bargaining is inefficient because it "creates incentives that stall settlement" including: adopting extreme positions, stubbornly making concessions, and attempting to take advantage of informational asymmetry.⁵⁵ Third, positional bargaining generally does not promote continuing relationships because the negotiation is characterized by a contest of wills, creating a zero-sum result that makes parties less inclined to trust or like each other enough to want to maintain a continuous relationship.⁵⁶

Consequently, GTY analysis suggests four criteria for principled bargaining:⁵⁷ first, "[s]eparate the people from the problem;"⁵⁸ second, "[f]ocus on interests, not positions;"⁵⁹ third, "invent options for mutual gain;"⁶⁰ and ***9** finally, principled bargaining should "[i]nsist on using objective criteria."⁶¹ These four points form the basis of GTY analysis.

A. Separate the People from the Problem

Principled bargaining "separate[s] the people from the problem" because negotiations run smoother if the substantive issues are not entangled with the visceral aspects of negotiations.⁶² GTY analysis approaches the human issues driving the dispute as distinct from the dispute itself, thus attempting to solve the people problems before addressing the substantive issues of the underlying dispute.⁶³ The "people problem" involves different perceptions based on different perspectives, emotions, and lack of communication.⁶⁴ There are several techniques to deal with each of these problems.

Perception problems involve the difference between the parties' "thinking" that makes it difficult to reach a WERB agreement.⁶⁵ Variance in the negotiators' perspectives results from their different "experiences, values, and points of view."⁶⁶ Fisher and Ury suggest several ways to address perception problems. First, understanding the other side's position by "put [ting] yourself in their shoes" creates empathy, and thus makes a party better able to avoid positional bargaining.⁶⁷ Second, look for opportunities to act inconsistently with negative perceptions held by the other side.⁶⁸ Third, Fisher & Ury suggest giving

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the other side “a stake in the outcome by making sure they participate in the process.”⁶⁹ Finally, making proposals consistent with the other side's values allows them to save face, thereby dealing with the “people problems.”⁷⁰ These approaches help neutralize perception problems.

***10** GTY also suggests ways to manage the emotional aspects of negotiations. Permitting the other side to vent their emotions can mitigate viscerality.⁷¹ Negotiators will often be angry, frustrated, or threatened by the opposing negotiators, and voicing these feelings may be constructive inasmuch as it helps the negotiators overcome their own internal issues before discussing the merits of the controversy.⁷² Second, negotiators can avoid acting emotionally and avoid reacting to parties that do.⁷³ Emotional actions and reactions, if left unchecked, can escalate into destructive positional bargaining.⁷⁴ Rather, negotiators should not only allow the opposing side to vent emotionally, but they should also avoid reacting negatively to such venting.⁷⁵ Calm response to emotional outbursts by the other side can de-escalate the negotiation's emotional pitch.⁷⁶ Third, symbolic gestures can calm flaring tempers.⁷⁷ Such gestures can be low-cost, high value (LCHV) alternatives to responding in-kind because they have a “constructive emotional impact” that facilitates negotiations.⁷⁸

Finally, miscommunication and lack of communication seriously impede efficacious negotiation.⁷⁹ Effective communication requires each side to listen actively to the other side and to acknowledge its arguments.⁸⁰ Negotiators can respond to communication problems in several ways. First, it is important to acknowledge the other side's position or argument.⁸¹ A party that feels as though it has been heard is less inclined to revert to positional bargaining than a party that feels the other side understands or appreciates the significance of its argument.⁸² Second, negotiations are greatly facilitated by changing the focus of statements from what the opposition did or failed to do, to how the negotiator feels about the event in question.⁸³ Rather than making the other party defensive by focusing on the negotiator when framing a problem, it is less derisive and more productive to focus on the issue in ***11** framing problems.⁸⁴ Finally, negotiators should speak with purpose. In other words, before speaking, negotiators should “know what [they] want to communicate or find out, and know what purpose this information will serve.”⁸⁵ By focusing on interests (i.e. needs defined through reasoned reflection), as opposed to reasons why the other side should change, negotiators are less apt to speak “off the cuff” in a manner that will agitate the opposing side.

B. Focus on Interests, Not Positions

A position is a stance a party has selected, whereas an interest is the underlying reason that causes a party to adopt its position.⁸⁶ Interests are easier to reconcile than positions because several positions exist to accommodate an interest.⁸⁷ The underlying or alternative interests may be compatible even though the alternative positions are incompatible.⁸⁸ Furthermore, each side is likely to have multiple interests, especially where the negotiation involves multiple parties.⁸⁹ Focusing on interests can be accomplished by communicating interests rather than positions; by looking to the future rather than the past; and fighting the substantive issues rather than the opposing negotiator.⁹⁰ Focusing on interests encourages the negotiators to attack a mutually vexatious problem rather than each other.

C. Invent Options for Mutual Gain

Rather than dividing up a finite pie, parties to a negotiation should endeavor ***12** to create options that will expand the size of the pie.⁹¹ Negotiators are more likely to reach a settlement if they can help solve the problem(s) the other side is attempting

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to address through the negotiation.⁹² Accordingly, devising creative options requires the parties: “(1) to separate the act of inventing options from the act of judging them; (2) to broaden the options on the table rather than look[ing] for a single answer; (3) to search for mutual gains; and (4) to invent ways of making their decisions easy.”⁹³ Principled bargaining can give creative negotiators more possible solutions, and thus a WERB agreement. Consequently, principled bargaining is preferable to positional bargaining in many regards.

D. Insist on Using Objective Criteria

Relying on objective criteria focuses the parties on interests rather than positions, and is thus more efficient than positional bargaining in making a WERB agreement.⁹⁴ Parties unnecessarily spend resources in making and defending positions.⁹⁵ Objective criteria allow the parties to focus on jointly finding possible solutions.⁹⁶ Selecting a neutral third-party to resolve disputes regarding standards of fairness is an objective criterion that is especially applicable to the peace process in Northern Ireland.⁹⁷

IV. GTY Analysis Applied to the Good Friday Agreement

Decommissioning paramilitary weapons has been the biggest obstacle to peace subsequent to the GFA.⁹⁸ Obviously, Republicans and Unionists have opposing positions on the decommissioning issue.⁹⁹ This Article applies *13 GTY analysis to the arms issue stalemate, and then offers recommendations for a decommissioning détente.¹⁰⁰

During the stalemate period, Unionists refused to allow Sinn Fein to take its place in a new power sharing executive unless the IRA first began to decommission.¹⁰¹ The IRA¹⁰² refused to begin decommissioning because it believed that the GFA did not require it until May, 2000.¹⁰³ Positional bargaining on the decommissioning issue stalled negotiations and locked parties into their respective positions.¹⁰⁴ Unionists and Republicans “painted themselves into corners so completely, that agreement [was] difficult to envisage.”¹⁰⁵ Positional bargaining placed the negotiators in a high-risk game of “chicken.”¹⁰⁶ This status quo lasted until December 2, 1999 when a Northern Ireland Executive was inaugurated, consisting of both Unionist and Sinn Fein ministers.¹⁰⁷ Principled bargaining offers the negotiators a better approach to the decommissioning dialectic.

Outlining the effects positional bargaining had on the decommissioning negotiations during the stalemate period demonstrates the relative superiority of principled bargaining. Acrimonious negotiations and political posturing impeded agreement on decommissioning because the parties focused on *14 positions to the exclusion of their interests.¹⁰⁸ Furthermore, decommissioning negotiations inefficiently spent much time and goodwill in reaching the political stalemate that existed when the parties left the bargaining table temporarily during the summer of 1999.¹⁰⁹ Finally, a contest of wills on decommissioning decreased the working relationship between Unionists and Republicans on other issues.¹¹⁰ Consequently, positional bargaining over decommissioning prevented the parties from reaching an agreement, let alone a WERB agreement.

A. Separating the People from the Problem

Several “people” problems plagued the decommissioning debate during the stalemate period. First, Republicans and Unionists engaged in ad hominem attacks on one another.¹¹¹ Second, the controversy emotionally charged both sides.¹¹² Emotional issues are inextricably interrelated with the problem of negotiators insulting each other, and will therefore be discussed

jointly. Third, perception problems affect almost every negotiation, the decommissioning negotiation in particular.¹¹³ Finally, communication problems created roadblocks to successful decommissioning. GTY analysis offers alternative approaches that may better facilitate decommissioning negotiations.

B. Insults and Emotions are a Large Part of the Negotiators' "People Problem"

Republican and Unionist insults and accusations injected unnecessary and counterproductive invective into the negotiations.¹¹⁴ This rhetoric may be a function of the negotiators' need for internal support.¹¹⁵ Both Unionists *15 and Republicans must satisfy constituencies that do not trust the other side.¹¹⁶ Thus, the negotiators must not appear too friendly toward the other side in order to prevent paramilitary hardliners from forming splinter organizations creating additional roadblocks to peace.¹¹⁷ However, principled bargaining may offer several alternatives to this political name-calling.

The negotiators may be publicly deriding each other while privately recognizing that the political posturing is for the benefit of hardline constituencies.¹¹⁸ Although this tactic gives the negotiators political capital with their constituencies, it risks alienating hardline constituencies in the event that an agreement on decommissioning is eventually reached.¹¹⁹ Furthermore, public statements followed by private winks do not necessarily engender complete trust between the negotiators themselves.¹²⁰ This approach promotes a positional bargaining mentality among Republican and Unionist constituencies that makes it even more difficult for the negotiators to reach an agreement.¹²¹ Therefore, this tactic is ultimately counterproductive and should be abandoned to the extent that it is being used.

The negotiators should use political rhetoric conveying their respective interests rather than their positions. Public statements concerning mutually respected goals would be more productive than the existing political rhetoric of accusations, insults, and recriminations.¹²² For example, it would be more productive to state "the Republicans want to move the peace process along by implementing other aspects of the GFA separately from the decommissioning negotiations" rather than "the Unionists are stalling implementation of other aspects of the GFA by insisting on decommissioning as a pre- *16 condition."¹²³ Rhetoric concerning peace and other non-contentious issues that coincide with constituencies' interests may satisfy the negotiators' political needs.¹²⁴ Both constituencies want peace, they just disagree about how it should be attained, or what the power balance should be in a peaceful Northern Ireland.¹²⁵ Although major disagreements on specific issues exist, there is great consensus on the negotiators' primary goal,¹²⁶ as evidenced by the popular mandates given to the peace process under the GFA through the May 1998 referendums.¹²⁷ To the extent that political rhetoric is predicated on the need to "look tough" for their respective constituencies, the negotiators must also recognize that such posturing further polarizes their constituencies.¹²⁸ Consequently, this rhetoric-induced polarization makes agreement more difficult to attain because it broadens the gap between the parties.¹²⁹ Therefore, political insults place the negotiators in a precarious bargaining position by fueling the cyclical relationship between political posturing and *17 positional bargaining.¹³⁰

The emotionally volatile nature of the dispute is partly a function of negative political rhetoric.¹³¹ The political struggle in Northern Ireland has predominated Irish politics for the past thirty years,¹³² and the underlying religious, economic and socio-political tensions date back centuries.¹³³ Principled bargaining would be more effective than positional bargaining in arriving at a decommissioning agreement because it is better designed to mitigate problems deriving from the negotiators' emotions.

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In Northern Ireland's climate of negative political rhetoric, GTY analysis provides negotiators with some paths around visceral constituencies and negative rhetoric. First, the negotiators must recognize and acknowledge the emotional aspects of the dispute.¹³⁴ Recognizing the powerful emotions present during the negotiations will not make them go away, but it will better equip the negotiators to manage emotional obstacles.¹³⁵ Second, to move *18 away from positional bargaining, the parties should lead the negotiation by remaining calm and focused in the face of negative rhetoric.¹³⁶ Rather than demonstrating weakness, such stoicism should demonstrate strength and resolve.¹³⁷ Reciprocating negative rhetoric discourages productive negotiations. Providing true leadership in the peace process is more difficult than resorting to political name-calling, but it will be much more productive.¹³⁸ Accordingly, the best strategy is to allow the other side to vent emotionally without responding in kind.¹³⁹ Initiating a course of dealing between the negotiators that establishes a norm of non-responsiveness toward negative rhetoric should eventually lead toward principled negotiations.¹⁴⁰ The party turning the other cheek should make its intent explicit. Therefore, by not responding in-kind to negative rhetoric, the negotiators give the opposing negotiators a cue follow their lead. By leading the peace process forward, pro-active negotiators may generate enough respect and popular support to outweigh any disadvantage caused by the fact that some hardline constituents may view such a tactic as surrender.

Finally, the “people problem” created by emotional rhetoric may be addressed by symbolic gestures.¹⁴¹ Making a symbolic gesture demonstrating a spirit of cooperation would be a LCHV concession with great potential to mitigate the decommissioning roadblock.¹⁴² Although news accounts primarily focus on the IRA's refusal to decommission, some Unionist paramilitary groups have also refused to decommission,¹⁴³ and have in fact continued *19 their terrorist campaigns.¹⁴⁴ Thus, an agreement on the decommissioning timetable should also address other paramilitary organizations to an extent necessary to achieve comprehensive decommissioning.¹⁴⁵ The IRA has repeatedly refused to decommission at all prior to May 2000 as “required” under the GFA, and it even suggests that it may not be willing to do so then.¹⁴⁶ Regardless of what is required under the GFA, the parties should realize that stringent positional bargaining may upset the gains realized thus far,¹⁴⁷ and should therefore continue to negotiate to resolve disputes regarding implementation of the GFA.¹⁴⁸

Accordingly, the IRA could move the peace process forward, and gain much political capital with all the relevant actors by making a token gesture of decommissioning.¹⁴⁹ A token gesture could be politically viable if the Republicans “seize[ed] the moral high ground” by claiming a victory for leading *20 the peace process.¹⁵⁰ This token gesture may even instigate a reverse arms-war of decommissioning.¹⁵¹ By voluntarily destroying some of its own weapons, the IRA could avoid the appearance of “surrender” while simultaneously putting political pressure on the Unionists to respond in kind.¹⁵² Token decommissioning would make it politically feasible for the Unionists to allow Northern Ireland's new executive branch to move forward by including Sinn Fein ministers.¹⁵³ Furthermore, the IRA could reinforce this gesture, while simultaneously expressly indicating that the action was not a sign of surrender, by destroying weapons solely used for offensive operations.¹⁵⁴ Destroying *21 offensive weapons would also make the decommissioning consistent with its philosophy of maintaining arms as a protective measure.¹⁵⁵

The IRA is not the only party responsible for engaging in positional bargaining. Republicans claim that the Unionists instigated the arms stalemate by demanding decommissioning before the deadline established under the GFA.¹⁵⁶ The need to placate constituencies prompted the Unionist's to demand early decommissioning, which pressured the IRA to respond.¹⁵⁷ The Unionists threatened to keep Sinn Fein from participating in the new Northern Ireland Executive until the IRA began to decommission.¹⁵⁸ Threats and pressure have thus far only produced opposition from Republicans, and may have restricted the Republicans' room to maneuver in negotiations.¹⁵⁹ Unionist demands that decommissioning occur before Sinn Fein assumed

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its ministerial role in the Northern Ireland Executive adversely effected the GFA negotiations by miring the entire process in a contest of wills between two sides that have not yielded to such pressures in thirty years.¹⁶⁰ Therefore, principled bargaining may be required to end further decommissioning gridlock.

*22 GTY analysis suggests that threats and pressure tactics are counterproductive because there are other ways to communicate the same information.¹⁶¹ Accordingly, the Unionists should reevaluate their approach toward pressuring the IRA to decommission.¹⁶² The negotiator's demands and line-drawing during the stalemate period make it important for both sides to find ways to allow the other to side save face.¹⁶³ Face-saving¹⁶⁴ can reconcile the negotiators' previously stated positions with an agreement on early decommissioning, and thus its importance should not be underestimated.¹⁶⁵

To reach agreement on a decommissioning timetable, the negotiators are going to have to abandon positional bargaining.¹⁶⁶ Maneuvers that promote *23 face-saving should facilitate the transition from positional to principled bargaining.¹⁶⁷ Unionists should stop demanding decommissioning in exchange for Sinn Fein participation in governing institutions.¹⁶⁸ This approach would give Republicans more flexibility with their constituencies, making agreement on the decommissioning timetable more likely.¹⁶⁹ Moreover, Unionists should make it easier for the IRA to begin decommissioning by putting a different kind of pressure on the IRA. Unionists should put equal pressure on Loyalist paramilitary groups to begin (or continue as the case may be) decommissioning.¹⁷⁰ Unionists should also frame their public statements *24 in a less agitational manner to foster collaboration, as opposed to previous public statements that put Republicans on the defensive.¹⁷¹ Mainstream paramilitary groups on both sides may encourage splinter paramilitary groups to decommission and to stop their terrorist campaigns.¹⁷² However, loss of public support is likely to be the surest way of silencing paramilitary guns.¹⁷³ Consequently, further Loyalist decommissioning would put positive pressure on the IRA to begin decommissioning.¹⁷⁴

Likewise, a change in the Republican tone would also advance GFA negotiations.¹⁷⁵ Rather than stating that the GFA (or the Mitchell Review) does not require decommissioning,¹⁷⁶ placing the Unionists on the counter-offensive, Republicans should state their interests in avoiding decommissioning. *25¹⁷⁷ Furthermore, Republicans and Unionists should discuss possible solutions that satisfy their needs in a constructive manner.¹⁷⁸ Principled bargaining would advance the peace process by re-framing the negotiators public statements.

Finally, the greatest "people problem" facing the negotiators in Northern Ireland, one for which GTY analysis provides less guidance, is the lack of trust existing between the parties.¹⁷⁹ Nonetheless, trust can be built through principled negotiations that take gradual moves toward decommissioning.¹⁸⁰ Creating a WERB agreement on decommissioning will require patience and faith in the common desire among negotiators for peace in Northern Ireland.¹⁸¹ One foundation for trust is the negotiator's common desire for peace, and the consequent knowledge that neither side will intentionally jeopardize the GFA.¹⁸² Ultimately, the negotiators' political self-interest may compel them to trust one another enough to reach agreement on decommissioning.¹⁸³

*26 C. Perception Problems Adversely Affect the Decommissioning Negotiations

During the stalemate period, Republicans and Unionists perceived the GFA's decommissioning requirements differently.¹⁸⁴ Unionists believed that the IRA should give up weapons to prove that it was seriously committed to peace and the democratic process.¹⁸⁵ Accordingly, Unionists "refuse[d] to share power with Sinn Fein until the IRA hand[ed] over at least some of

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their arms.”¹⁸⁶ Republicans, on the other hand, claimed that the GFA did not specify that arms had to be handed over, but merely stated that the parties would work towards decommissioning by May 2000.¹⁸⁷ Furthermore, Republicans contended that decommissioning under the GFA was to be done in the context of the GFA's overall implementation.¹⁸⁸

GTU analysis suggests that “[u]ltimately. . . conflict lies not in objective reality, but in people's heads. . . [and that the] difference itself exists because it exists in their thinking.”¹⁸⁹ This difference between Republican and Unionist thinking caused misunderstanding.¹⁹⁰ Thus, both Unionists and Republicans should acknowledge the other side's perception of what is required by the GFA and the Mitchell Review.¹⁹¹ Rather than interpreting the other side's perceptions as hostile, negotiators on both sides should attempt to understand why they see things the way they do.¹⁹² By understanding the other side's stance on decommissioning, the negotiators will be better prepared to select a decommissioning policy that is easier for the other side to accept, *27 thereby facilitating agreement.¹⁹³ Understanding both perspectives will enable the negotiators to select words and deeds more agreeable to their counterparts while remaining consistent with their own perceptions.¹⁹⁴

Furthermore, GTU analysis suggests that perception problems can be avoided by refraining from placing blame.¹⁹⁵ Even when justified, blaming the other side in a negotiation is counterproductive because it makes a negotiator defensive and less receptive to ideas and suggestions that would otherwise constructively advance negotiations.¹⁹⁶ Accordingly, laying “blame firmly entangles the people with the problem,” and thus impedes effective negotiations.¹⁹⁷ Republicans and Unionists blame each other for various injuries. During the stalemate period, Republicans blamed the Unionists for attempting to change the terms of the GFA by unjustifiably demanding early decommissioning.¹⁹⁸ Unionists blamed Republicans for refusing to decommission in good faith under the terms of the GFA.¹⁹⁹ Negotiators face the blame of political factions and hardliners for conceding too much.²⁰⁰ This blame factor interferes with the decommissioning negotiations.

Therefore, negotiators, to the extent possible, should remove the blame factor from decommissioning negotiations. Republicans should attack the problem, not the Unionists.²⁰¹ Rather than blaming Unionists for attempting to change the GFA's decommissioning requirements, the Republicans could suggest that early decommissioning would create political instability among Republicans, but that they would be willing to discuss ways establish a decommissioning timetable. This approach would communicate the Republicans' interest in decommissioning at a slower rate while also answering the substance of Unionist requests.²⁰² Likewise, Unionists could find ways to avoid blaming Republicans. Unionists should initiate discussions about early decommissioning in a less adversarial manner.²⁰³ For example, they could explain why they believe that a decommissioning timetable would advance *28 the process, as opposed to demanding decommissioning because it is something Unionists want.²⁰⁴ By proceeding in such a manner, Unionists may hasten decommissioning, but they may also get something that may be more valuable: a statement by the IRA that the war is over.²⁰⁵

GTU analysis also suggests that perception problems may be overcome by acting in a manner that is inconsistent with the other side's negative perception of you.²⁰⁶ Thus, the negotiators could earn trust by acting in a manner consistent with the other side's interests and inconsistent with their negative perceptions.²⁰⁷ A prime example of this approach would be for Republicans to make a token gesture of decommissioning, although this is unlikely. Nonetheless, Republicans have refrained from retaliatory violence, which was contrary to Unionist expectations.²⁰⁸ Likewise, Unionists exemplified this approach when they allowed Sinn Fein to participate in the Northern Ireland Executive prior to decommissioning.²⁰⁹ Accordingly, principled bargaining offers both sides several options for generating goodwill that would promote better negotiations.

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Finally, GTY analysis suggests that negotiators give the other side a stake in the agreement or outcome by ensuring their participation.²¹⁰ To get the opposing side to accept a disagreeable conclusion, the negotiators must involve their counterparts in the process of reaching that conclusion.²¹¹ Therefore, making the decommissioning timetable a product of joint Unionist and Republican efforts is essential to successful decommissioning.²¹² Moreover, both sides should attempt to internally co-opt their hardline constituencies into the process of establishing the negotiator's respective interests in arriving at a decommissioning timetable.²¹³

***29 D. Communication Problems are an Additional Roadblock to Decommissioning**

Lack of effective communication hindered decommissioning negotiations.²¹⁴ The decommissioning dialectic involved politics as well as negotiations.²¹⁵ Both Unionists and Republicans made public statements for the benefit of constituents and third parties.²¹⁶ The negotiators should make their arguments at the bargaining table rather than in the newspapers because of the deleterious effect on the negotiators' working relationship.²¹⁷

GTY analysis suggests that active listening and acknowledgement help resolve ineffective communication.²¹⁸ Public posturing over decommissioning has not been conducive to making each side feel as if it has been heard and understood.²¹⁹ Taking the negotiations out of the press would promote active listening.²²⁰ Republicans and Unionists have stated their respective positions, and each has replied by criticizing the other side, or by justifying their own position.²²¹ The negotiators should acknowledge the concerns raised by the other side, silence their competing mantras, and begin discussing the merits of each position.²²²

V. Focusing on Interests Rather than Positions

During the stalemate period, negotiators focused almost entirely on their positions, thus hampering agreement on decommissioning.²²³ GTY analysis suggests that the parties should focus on their respective interests instead.²²⁴ Therefore, the negotiators should attempt to reconcile their interests ***30** rather than their irreconcilable positions.

The negotiators must first identify their interests in effectuating decommissioning.²²⁵ Several interests underlie the Republicans' refusal to start decommissioning. First, Republicans have an interest in security, viewing themselves as Catholic defenders.²²⁶ Second, Republican negotiators have an interest in maintaining their internal support and avoiding hardline defections.²²⁷ Finally, most Republicans want peace.²²⁸ The latter two interests are more general, however, they are important inasmuch as they affect the Republican position on decommissioning. Conversely, Unionists have several interests that seem to be inversely related to those of their Republican counterparts. Unionists also have an interest in security.²²⁹ However, this interest ostensibly requires Republicans to sacrifice their security interest, or vice-versa.²³⁰ Second, Unionists also have an interest in retaining political support and pacifying hardline constituents.²³¹ Finally, Unionists also have an interest in preserving peace under the GFA.²³²

Republican and Unionist interests appear to be as irreconcilable as their positions.²³³ Alternatives may exist that satisfy both side's interests. Republicans may feel secure only when armed, whereas Unionists feel threatened by armed Republicans.²³⁴ An apparent prisoner's dilemma results. Republicans and Unionists would be better off if they both made a concession on

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decommissioning, but neither side is willing to trust the other enough to make a concession that would increase the likelihood of peace.²³⁵ Furthermore, preserving the GFA and the progress made thereunder is paramount in light of the lack of a real alternative for peace.²³⁶ Therefore, the real dispute concerns the timing of decommissioning.²³⁷

Since decommissioning would mutually benefit both sides in the long- *31 term, it seems that “jumping together” on decommissioning would satisfy their respective short-term interests in security.²³⁸ The fact that decommissioning is more symbolic than security related calls into question whether the negotiators' interests in security would really be affected by decommissioning since weapons can always be replaced.²³⁹ The agreement itself would apparently satisfy the negotiators' interests in security and peace. Furthermore, the negotiators' interests in preventing hardline defections may also be satisfied by the decommissioning agreement itself. An agreement on decommissioning would greatly raise the hopes for peace of many Protestants and Catholics. Consequently, the closer the negotiators get to a popularly supported agreement, the more difficult it will be for hardliners from either side to oppose it without risking a loss of public support.²⁴⁰ Both sides agreed that decommissioning would take place at some point.²⁴¹ However, the timing of decommissioning created an impasse, not because of the negotiators' practical interests, but rather their political interests.²⁴² Therefore, the negotiators should endeavor to mitigate the political pressures that prevent them from making the difference of a few months an insurmountable obstacle to reaching agreement.²⁴³

In focusing on interests rather than positions, the parties should look to the future, not the past.²⁴⁴ Principled bargaining is promoted by a prospective approach because it focuses on a common goal rather than assessing blame for past events.²⁴⁵ Focusing on the future would greatly facilitate decommissioning.²⁴⁶ Although thirty years of violence and sectarian conflict may never be erased, and should never be forgotten, making peace is the best way to honor those who have died in the Troubles.²⁴⁷ Making the past a *32 prologue for peace will help the negotiators focus on interests in a more productive manner.²⁴⁸

VI. Inventing Options for Mutual Gain

During the stalemate period, decommissioning was approached in an either-or fashion. Either Republicans decommission or they would be kept from sharing power in the new Northern Ireland Executive branch.²⁴⁹ Positional bargaining created an impasse on decommissioning.²⁵⁰ Rather than approaching decommissioning as an “either/or” proposition, the negotiators should attempt to invent options for mutual gain.²⁵¹ This approach was exemplified by Trimble's Machiavellian maneuver that allowed Sinn Fein to participate in the Northern Ireland Executive while saving face for apparently abandoning the line in the sand that he had previously drawn.²⁵² Trimble employed a very simple but effective method to break an almost two-year stalemate.²⁵³ Trimble presented Unionists with two letters: a letter from Northern Ireland's Secretary of State assuring Unionists that Sinn Fein would be held accountable if the IRA did not decommission; the other letter was Trimble's post-dated resignation to be tendered in February 2000 if the IRA failed to decommission.²⁵⁴ Although this tactic only deferred the decommissioning showdown until February 2000, it shows how the negotiators can develop creative and mutually beneficial ways around disagreement. The negotiators should strive to explore additional options for mutual gain.²⁵⁵

VII. Insisting on Objective Criteria in Resolving the Decommissioning Issue

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Fisher and Ury include third-party neutrals under the rubric of objective *33 criteria.²⁵⁶ For example, the negotiators might again revert to mediation by a third-party neutral.²⁵⁷ Mediation by a mutually respected neutral could produce a decommissioning timetable by mitigating positional bargaining.²⁵⁸ However, Mitchell has stated that his role in mediating the peace process in Northern Ireland is concluded, and it appears as though Mitchell has achieved as much as any mediator could hope to achieve in Northern Ireland.²⁵⁹ Therefore, reaching a definitive decommissioning timetable may require the intervention of a third-party neutral with some binding authority.

The negotiators might also explore the option of sustained intervention by a third-party neutral.²⁶⁰ Further demilitarization of Northern Ireland or RUC reformation concessions might be exchanged for Republican decommissioning.²⁶¹ To facilitate such an exchange, the parties may need to satisfy security concerns by also agreeing to an external police presence to maintain order in Northern Ireland during the transition period.²⁶² Each side would make gains on its security interests while simultaneously maintaining overall security in Northern Ireland. Establishing clear guidelines as to the scope and length of intervention, as well as the method for forming a new police force for Northern Ireland, would best ensure a peaceful transition from the status quo to external presence, and subsequently to a new internal security force.²⁶³ However, to the extent that external peacekeeping forces would further militarize Northern Ireland, possibly giving paramilitary groups cause for action, it should be considered more of a last resort in the event of failed negotiations and resumed hostilities. Accordingly, a decision by the IICD, supported by public opinion and the parties themselves, appears to be the most preferable path available.

*34 The negotiators could opt for a Med-Arb procedure or some variant thereof involving the IICD.²⁶⁴ The IICD is the third-party neutral responsible for judging compliance with the GFA's decommissioning provisions.²⁶⁵ The IICD may also be well-situated to resolve the parties' disputes regarding the timing of decommissioning.²⁶⁶ Several major paramilitary groups have already named representatives to act as intermediaries with the IICD.²⁶⁷ The nomination of paramilitary representatives demonstrates a willingness to discuss the decommissioning dispute with the IICD. Therefore, one solution might involve the IICD's mediation of an agreement between the paramilitary representatives.²⁶⁸ Such a mediated negotiation between the paramilitaries themselves would be better designed to overcome decommissioning because Mitchell's mediation did not directly include the paramilitaries. Furthermore, the IICD may possess greater technical authority regarding the practical feasibility of decommissioning, and may thus command greater respect from the paramilitary groups. If mediation failed to produce a decommissioning *35 timetable, then the IICD could arbitrate the dispute.²⁶⁹ The paramilitaries could reduce the risk of an extremely unacceptable arbitration decision by adopting a high-low Med-Arb procedure where the IICD's decision would be bounded by the last offers made by the parties during the mediation.²⁷⁰ A high-low Med-Arb procedure would encourage the parties to make reasonable offers because unreasonable offers are less likely to be adopted by the arbitrator in the event that the mediation fails. A Med-Arb process is not risk-free,²⁷¹ and thus a negotiated agreement would be the most preferable solution.²⁷²

VIII. Conclusion: Principled Bargaining Offers a Better Approach to Avoiding Decommissioning Roadblocks in Northern Ireland

So let us begin anew - remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof. Let us never negotiate out of fear, but let us never fear to negotiate.

-John F. Kennedy²⁷³

Violent conflict has pervaded Northern Ireland for centuries. Although conflict between Republicans and Unionists may be unavoidable,²⁷⁴ it does not have to result in violence.²⁷⁵ Fisher and Ury's GTY analysis, a leading negotiation paradigm, offers methods to improve the conflict management techniques used in Northern Ireland. Positional bargaining has exacerbated the conflict. George Mitchell's mediation efforts were instrumental in bringing the parties to the table, reaching the GFA, and in bringing them *36 back to the table to address the decommissioning détente.²⁷⁶ Despite groundbreaking compromises established by the GFA and the Mitchell Review, various obstacles remain on the path to peace. The decommissioning issue constantly threatens a tenuous peace that, barring a showdown, should improve with age. Nearly two years of negotiations have failed to successfully resolve the decommissioning issue, and have instead strained the parties' working relationship. Line-drawing, name-calling, and political posturing have decreased the likelihood of an agreement on decommissioning in Northern Ireland. Therefore, a new approach is needed to avoid repeating the strategies and methods that have failed to resolve this thirty-year conflict.

GTY analysis suggests ways around the decommissioning impasse. Positional bargaining has calcified positions and made it difficult to reach an agreement on decommissioning. Both sides must find a compromise that is politically viable in light of the parties' previous statements and opposition from paramilitaries and political factions who oppose the GFA.²⁷⁷ Accordingly, the parties must fashion a solution that allows both sides to save-face and avoid the appearance of surrender.²⁷⁸ A synchronized compromise is one such option.²⁷⁹ The negotiators could “jump together” by simultaneously making concessions that would be impossible to make unilaterally.²⁸⁰ Furthermore, resolution of the decommissioning issue requires sensitive precision in wording the compromise. For example, the IRA could state that the weapons are out of commission or “beyond use”, which is consistent with their claim that the cease-fire is the best evidence of their desire for peace.²⁸¹ Likewise, maybe Unionists would be satisfied with an IRA statement that the “war is over” or an equivalent statement that would be more valuable than symbolic decommissioning, or actual decommissioning that could lead *37 to violence by fringe paramilitary groups. Finally, the use of objective criteria may be the only way to effectuate decommissioning. Accordingly, intervention by a third-party neutral such as the IICD may be necessary to reach a decommissioning compromise that both sides would abide by.²⁸² The IICD already has the great responsibility of judging decommissioning compliance. However, the IICD may also have to play a role in establishing a decommissioning timetable in order to get to the point of judging compliance. The parties may be able to live with a compromise suggested or imposed by the IICD that would be unacceptable otherwise.²⁸³

An inability to reach compromise on decommissioning will seriously threaten the future viability of the GFA and the peace process itself.²⁸⁴ Both sides have invested much into the GFA and subsequent discussions. Failure of the peace process would be worse than any concession either side could make on decommissioning.²⁸⁵ Therefore, the negotiators have every incentive to make the GFA work. Accordingly, the parties should acknowledge that positional bargaining has failed to yield satisfactory results, and that a new approach is needed. Although the GFA and subsequent developments represent a vast improvement from past hostilities, less contentious means could have brought the parties farther, or to this stage sooner. In fact, breaking the “no guns, no government” stalemate was made possible primarily through GTY-styled tactics. The GTY approach facilitates the management and resolution of conflict, and would therefore help the parties navigate a path to peace in Northern Ireland.

Footnotes

- a1 Litigation associate in Boston, Massachusetts; J.D., Boston University School of Law, 1999; B.A., Niagara University, 1996. The views expressed in this Article are my own and do not represent the views of either my firm or any of its clients. The author thanks Professor Brigid Hadfield and Michael Vasko for their comments, however, all mistakes and inadequacies are my own.

- 1 Although the popular press often referred to the Good Friday Agreement (GFA) as a negotiation, it was actually a mediation because former U.S. Senator George Mitchell was a third-party neutral facilitator. See Dayle E. Spencer & Honggang Yang, [Lessons From the Field of Intra-National Conflict Resolution](#), 67 *Notre Dame L. Rev.* 1495, 1495 (1992). Furthermore, the GFA is not an enforceable legal contract. See. Stephen B. Goldberg et al., *Dispute Resolution: Negotiation, Mediation, and Other Processes* 5 (1992). Rather, the GFA is enforceable, if at all, through public opinion, political persuasion, and voluntary compliance. See Maire Geoghegan-Quinn, *People Must Now Have Courage to Accept Change and Make it Work*, *Irish Times*, Apr. 11, 1998, at 8 (stating that the GFA would have to be sold to the people before the May 22 referendum)[hereinafter Geoghegan-Quinn I]; David Byrne, [An Irish View of the Northern Ireland Peace Agreement: The Interaction of Law and Politics](#), 22 *Fordham Int'l L. J.* 1206, 1206 (1999). This Article refers to the GFA as a negotiation rather than a mediation inasmuch as the GFA is a baseline for further negotiations, rather than a final mediated agreement. See Gerry Adams, [To Cherish a Just and Lasting Peace](#), 22 *Fordham Int'l L.J.* 1179, 1185 (1999). In this regard, the GFA is a hybridized form of dispute resolution, a mediated negotiation (Med-Neg) similar to Med-Arb. See. Goldberg., *supra*. Mediation was needed to encourage talks between the parties, and to develop enough consensus to make continued negotiations viable. This mediation bridged the gap between the parties' respective positions, generating enough agreement on crucial issues to make further negotiations possible. This mediation was required just to get the parties to the table. However, the GFA's terms were vague in many respects, thus making further negotiations necessary. This bifurcated process may have been designed to avoid the failure of past peace agreements. The mediation produced a penultimate agreement which negotiations will hopefully parlay into an ultimate agreement. All parties have invested much in the GFA and subsequent series of negotiations and mediations, thus making it difficult for either side to allow the process to fail over disagreements on discrete issues. Therefore, this mediated negotiation is an improvement upon previous negotiations where hard-bargaining and polemic positions allowed microcosmic disagreements upset the possibility of agreement on the larger issues.
- 2 See Deaglan de Breadun, *Historic Agreement Marks a New Beginning For Us All*, *Irish Times*, Apr. 11, 1998, at 1 [hereinafter de Breadun I]. The term "Republican" has been defined as "[a] supporter of a united Ireland" while a "Nationalist" has been defined as "[s]omeone who aspires too a re-united Ireland by non-violent means." *The Path to Peace: Alphabet Soup*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>> [hereinafter Alphabet Soup]. Thus, this Article treats "Republican" and "Nationalist" as loosely analogous inasmuch as both groups share the common goal of a united Ireland, although they differ as to the means that should be employed toward that end. Although the terms "Loyalist" and "Unionist" have nuanced meanings, they are being used interchangeably. See *id.* (defining Loyalist as "[s]omeone who is resolutely opposed to a united Ireland and who favours maintaining the Union with Britain;" and, defining Unionist as "[s]omeone who believes in maintaining Northern Ireland's political Union with Great Britain"). Furthermore, the GFA is also known as the Belfast Agreement. *Birth of a New Ireland*, *Irish Times*, Dec. 2, 1999 at 1.
- 3 See *Bloody Countdown to Northern Ireland's Historic Peace Process*, Agence France-Presse, Oct. 16, 1998 [hereinafter *Bloody Countdown*]. Notable among previous peace pacts reached in Northern Ireland include: the Sunningdale Agreement in 1973-74 ("attempt at power-sharing between Catholics and Protestants, fails after a general strike by Protestants"); the Anglo-Irish Agreement in 1985 (giving The Republic of Ireland a consultative role in Northern Ireland failed after Protestants demonstrate); and a ceasefire declared by paramilitary groups in 1994 that lasted two years until an IRA bomb exploded in London. See *id.* However, none of these agreements successfully ended the hostilities. See *id.*
- 4 See generally *The Path to Peace*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>> (presenting a compendium of primary sources, materials, and discussion groups regarding conflict and the peace process in Northern Ireland).
- 5 Roger Fisher & William Ury, *Getting to Yes* (2d ed. 1991).
- 6 "Decommissioning" can be defined as the process of disarming paramilitary organizations in Northern Ireland. See *id.* Although decommissioning confronted the negotiators in Northern Ireland before the GFA, this Article only examines the decommissioning debate subsequent to the GFA. This Article focuses more on the application of GTY principles to a specific issue, which is but a part of a more complex international dispute, than on the underlying dispute itself. Snapshots of the decommissioning debate are extracted for analysis because a holistic examination of the entire peace process, or even of the complex interrelationship between decommissioning and other issues, is beyond the scope of this Article. This approach, of necessity, oversimplifies the issues confronting the negotiators in Northern Ireland. This Article does not propose a recipe for peace, to do so would be, at the least, naive. Rather, this Article uses the decommissioning debate as a milieu for the application of GTY principles. For an extensive bibliography see <<http://cain.ulst.ac.uk/>

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bibdbs/index.html> and for related research sites see <<http://cain.ulst.ac.uk/events/peace.htm>>. Moreover, this Article is written from an admittedly “American” perspective, with all of the biases and shortcomings inherent of an outsider. Cf. Deaglan de Breadun, Opinion: Mitchell a Commanding Presence in Shifting Entrenched Positions, *Irish Times*, Nov. 19, 1999, at 14 [hereinafter de Breadun II](referring to the international media as “[u]nversed in the complexities of Irish history in general and Republicanism in particular”).

7 See Fisher & Ury, *supra* note 5, at 22-39; John Mullin, Analysis: Decommissioning Arms, *The Guardian* (London), Oct. 15, 1998 [hereinafter Mullin I](stating that decommissioning is blocking the GFA and that “if no compromise is found, the edifice agreed to on April 10 [1998] will come crashing down”).

8 Effectuating decommissioning and ultimately, peace, and changing the negotiations from positional bargaining to principled bargaining is obviously much easier said than done. However, despite the acknowledged difficulties on the road to peace in Northern Ireland, the author contends that the path to peace would be easier to travel under a positional bargaining regime than under existing positional bargaining.

9 See J. Bowyer Bell, *The Gun in Politics* 64 (1991).

10 See *id.*

11 See *The Path to Peace: An Historical Perspective*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>>.

12 See John Darby, *Conflict in Northern Ireland* 26 (1976).

13 See *id.*; see also *From the Start of 30 Years of Troubles...To Progress Towards Peace in the 1990's*, *Irish Times*, Apr. 13, 1998, at 15 (outlining major events of the thirty year conflict in Northern Ireland) [[hereinafter *The Troubles*]]. See also *Bloody Countdown*, *supra* note 3 (outlining major events of the thirty-year conflict).

14 See Maol Muire Tynan, *The Long Road from Dublin*, *Irish Times*, May 5, 1998, at 62; *The Troubles*, *supra* note 13.

15 See *The Path to Peace: The Troubles*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>>; George J. Mitchell, *Making Peace* 12 (1999).

16 See Mitchell, *supra* note 15, at 12.

17 See *Alphabet Soup*, *supra* note 2.

18 However, socio-economic divisions that evolved historically along religious lines have also contributed to “the Troubles.” See Seamus Dunn & Jacqueline Nolan-Haley, [Conflict in Northern Ireland After the Good Friday Agreement](#), 22 *Fordham Int'l L.J.* 1372, 1373 (1999).

19 For example, the Republican or nationalist political parties include, but are not limited to: Sinn Fein; Social Democratic and Labour Party (SDLP); Fianna Fail; Fine Gail; and the Irish Republican Socialist Party (IRSP). See *Alphabet Soup*, *supra* note 2. Similarly, the Unionist or Loyalist political parties include, but are not limited to: Ulster Unionist Party (UUP); Progressive Unionist Party (PUP); Ulster Democratic Party (UDP); Alliance Party; and the Democratic Unionist Party (DUP). See *id.*; Deaglan de Breadun, *Historic NI Agreement Gives Hope for Future*, *Irish America*, June 30, 1998, at 32.

20 Paramilitary groups have been referred to as “ignorant armies clash [[ing] by night.” Deaglan de Breadun, *Senator Entered the Fray Armed with Civility*, *Irish Times*, Apr. 11, 1998, at 62 [hereinafter de Breadun III]; see also *Alphabet Soup*, *supra* note 2 (describing the various paramilitary groups); Mitchell, *supra* note 15, at 23.

21 See *Alphabet Soup*, *supra* note 2 (describing other Republican paramilitary groups including: Catholic Reactionary Force (CRF); Continuity IRA (CIRA); Irish National Liberation Army (INLA); and Irish People's Liberation Organization (IPLO)).

22 See *The Path to Peace: The Troubles*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>> [hereinafter *Path to Peace I*].

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- 23 The IRA has split into factions in the past: the Provisional IRA (Provos) split from the Official IRA (Officials) in 1970. See *The Troubles*, supra note 13, at 15; *Alphabet Soup*, supra note 2. More recently, the Continuity IRA broke off because of disagreement over the desirability of entering a cease-fire. See *id.*
- 24 See David McKittrick, *Four Attacked in N. Ireland "Punishment Shootings,"* *The Independent* (London), Jan. 7, 1999, at 8 [hereinafter *McKittrick I*]; see also *Alphabet Soup*, supra note 2 (describing other Loyalist paramilitary groups including: Protestant Action Force (PAF); Loyalist Volunteer Force (LVF); Red Hand Commandos; Ulster Defense Association (UDA); Ulster Freedom Fighters (UFF); and Ulster Volunteer Force (UVF)).
- 25 These acts of terrorism range from bombings and assassinations to beatings and exiling. See *McKittrick I*, supra note 24, at 8. In addition to political violence, both Republican and Loyalist paramilitary groups mete out street justice to young men engaged in "anti-social activity." See *id.* Punishments include beatings and shootings, usually in the ankle or knee-cap. See John Lloyd, *Triumph of the Gangsters*, *Daily Mail* (London), Dec. 12, 1998, at 12.
- 26 See *Listening Mode in Ulster: The Participants in Northern Ireland's Peace Process are Running Out of Ideas*, *Economist*, Apr. 22, 2000.
- 27 See *The Path to Peace I*, supra note 22 (outlining the major events of the conflict in Northern Ireland).
- 28 See *The Troubles*, supra note 13, at 15.
- 29 See *id.*
- 30 See Byrne, supra note 1, at 1208.
- 31 Bertie Ahern, *Agreement Spells Victory for Change and Reconciliation*, *Irish Times*, May 1, 1998, at 14.
- 32 The GFA was endorsed by 71.1% of those voting in Northern Ireland and by 94.4% of those voting in the Irish Republic. See *Bloody Countdown*, supra note 3; see also Geraldine Kennedy, *Questions and Answers on the Referendums*, *Irish Times*, May 21, 1998, at 12 (explaining in detail the propositions that were being placed on the ballot in Ireland and Northern Ireland, and what a "yes" vote would result in); Dick Walsh, *The Results of Friday's Votes Were One of the Great Moments of Irish History*, *Irish Times*, May 25, 1998, at 59 (stating that "popular support for the agreement, North and South, among Unionists and nationalists, ranged from highly satisfactory to all but unanimous").
- 33 See *The Path to Peace: Assembly Elections*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>>.
- 34 See Bertie Ahern, *The Good Friday Agreement: An Overview*, 22 *Fordham Int'l L. J.* 1196, 1196 (1999); Byrne, supra note 1, at 1209-21.
- 35 See *Irish Peace Talks*, *The Independent* (London), Apr. 11, 1998, at 2; *The Good Friday Agreement is Dying*, *The Guardian* (London), Mar. 25, 1999, at 17 (stating that "[t]he fudge on terrorists' weapons which seemed such a clever idea a year ago is now turning out to be a sickly confection").
- 36 See Ahern, supra note 31, at 14.
- 37 See *id.*; see also *The Agreement: What it Means*, *Irish Voice*, Apr. 21, 1998, at 10; *Full Text of the Agreement*, *Irish Times*, Apr. 11, 1998, at 64-67 (publishing the full text of the GFA)[hereinafter *GFA text*]; *The Path to Peace: The Agreement*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>> (publishing the full text of the agreement and relevant commentary); Byrne, supra note 1, at 1208 (discussing the legislative implementation of the GFA).
- 38 See *Geoghegan-Quinn I*, supra note 1, at 8.
- 39 See Frank Shouldice, *Sinn Fein at the Crossroads*, *Irish Voice*, Apr. 28, 1998, at 7 (stating that "[t]he Stormont agreement was a milestone but its very ambiguity leaves it all things to all men. And so the messages from UUP negotiators ("the union is now stronger") was not quite the same as those delivered [by the Republicans] ("the union has undoubtedly been weakened").... Different

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constituencies, different lines.”)); see also de Breadun I, supra note 2, at 1; Frank Millar, Spotlight to Track Adams and Trimble: The UUP and Sinn Fein Leaders Have Taken the Ultimate Risks for Peace - Now They Must Turn to Their Own Parties and Persuade the Unbelievers, *Irish Times*, Apr. 13, 1998, at 11 (stating that both the Republicans and Unionists were “shell-shocked by the scale of the compromises they are now asked to endorse [in the May 22 referendum]”)[hereinafter Millar I]; Niall O'Dowd, Peace at Last?, *Irish Voice*, Apr. 21, 1998 (noting that George Mitchell, an instrumental force behind the GFA, acknowledged that “many in Sinn Fein will have problems with it, and that Trimble faces a lot of opposition from Ian Paisley...[and] hardliners in his own party”)[hereinafter O'Dowd I].

40 See Deaglan de Breadun, New Hero Needed to End North Impasse - Talks Aimed at Breaking the Decommissioning Impasse have Resumed, but the Deadlock Remains, *Irish Times*, Apr. 14, 1999, at 6 [hereinafter de Breadun IV].

41 Patsy McGarry & Jimmy Walsh, Progress on Arms Issue to Play A Vital Role in Making Peace Pact Effective Ahern says, *Irish Times*, Apr. 23, 1998, at 9 [hereinafter Progress on Arms].

42 See Maire Geoghegan-Quinn, Decommissioning Must Not Explode Peace Process, *Irish Times*, May 30, 1998, at 14 [hereinafter Geoghegan-Quinn II]; Deaglan de Breadun, Growing Sense of Crisis on Decommissioning, *Irish Times*, Sept. 24, 1998, at 6 [hereinafter de Breadun V]; Arms Issue Could Still “Park” Process, *Irish Independent*, Feb. 17, 1999, available in 1999 WL 5800566.

43 See Kevin Cullen, Hope Amid Inflexibility in Ulster, *Boston Globe*, Dec. 12, 1999, at A14-15 [hereinafter Cullen I]. The decommissioning stalemate was interrupted by several failed attempts to renew negotiations. See John Mullin, A Chance to Forget Past Bitterness, *The Guardian* (London), Nov. 19, 1999. The “Way Forward” was an attempt by the governments of Ireland and Great Britain to negotiate a way around decommissioning roadblocks that failed when Unionists rejected the proposal in July 1999. See Seamus Mallon, Not Impossible: Unionists Must Now Show Sincerity, and Republicans A Genuine Commitment to Peaceful Methods, *The Guardian* (London), Sept. 6, 1999.

44 See Cullen I, supra note 43, at A14 . George Mitchell returned in early Sept. 1999 to find a familiar logjam and a consensus that the Mitchell Review would fail. See Steven Moore, Mitchell Review's Chances are Slim, *News Letter* (Belfast), Sept. 6, 1999, at 1, 6.

45 See Cullen I, supra note 43, at A14.

46 See id. This implementation culminated in a historic series of events in early December 1999. See id. These events included: the devolution of political power from British Parliament to the Northern Ireland Assembly; the Republic of Ireland formally dropped their constitutional claim to the territory of Northern Ireland; the signing of a treaty governing the relationship between Ireland and Great Britain; and the formal assumption and exercise of executive power in Northern Ireland by a government comprised of Unionists and Nationalists. See id.; Deaglan de Breadun, Direct Rule of North Ends as New Executive Meets, *Irish Times*, Dec. 3, 1999, at 1 [hereinafter de Breadun VI].

47 See Peter Taylor, Deadlock Postponed, *The Guardian* (London), Nov. 29, 1999 (reporting that Unionists voted to share power with Sinn Fein until they reconvene in February 2000 to review the IRA's progress on decommissioning).

48 See Jim Dee, Next Step: Give Up Guns; IRA Taps Weapons Negotiator, *Boston Herald*, Dec. 3, 1999, at 7 [hereinafter Dee I].

49 See Cullen I, supra note 43, at A14-15. In fact, the decommissioning debate is responsible for Great Britain's unilateral suspension of government in Northern Ireland.

50 See Fisher & Ury, supra note 5, at 4 (defining a wise agreement as “one that meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account”).

51 See id. at 14.

52 Id. at 3.

53 See id. at 5.

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- 54 See id.
- 55 See id. at 5-6.
- 56 See id. at 6-7. Furthermore, “[w]hen there are many parties, positional bargaining is even worse” because of the complexity involved in reaching an agreement reflecting varied interests. Id. at 7. In order to accommodate numerous parties, coalitions often develop, resulting in agreements that may be “more symbolic than substantive.” Id.
- 57 See id. at 10-14. Additionally, parties should figure out their best alternative to a negotiated agreement (BATNA) before entering negotiations. See id. at 97. The BATNA is the standard against which a proposed agreement is to be measured. See id. at 100. Accordingly, parties may assess whether a proposed agreement satisfies their interests better than any options they may have. See id. Fisher and Ury distinguish BATNA from a “bottom line” by assuming that a “bottom line” is arbitrarily made. See id. However, it is not necessarily clear that a well reasoned bottom line and a BATNA are incongruent. Therefore, for the purposes of this paper, the two concepts are treated as consistent with one another.
- 58 Id. at 11.
- 59 Id.
- 60 Id.
- 61 Id. at 12.
To sum up, in contrast to positional bargaining, the principled negotiation method of focusing on basic interests, mutually satisfying options, and fair standards typically results in a wise agreement. The method permits you to reach a gradual consensus on a joint decision efficiently without all the transactional costs of digging in to positions only to have to dig yourself out of them.
Id. at 14 (emphasis in original).
- 62 See id. at 10-14.
- 63 See Joan Sterns Johnsen, *The Applicability of Getting to Yes to Securities Mediation*, 999 PLI/Corp 829, 833 (1997).
- 64 See Fisher & Ury, *supra* note 5, at 22-39.
- 65 See id. at 22.
- 66 Johnsen, *supra* note 63, at 833. Accordingly, “[t]hese factors will color each person's analysis of the facts and fuel the dispute.” Id.
- 67 See Fisher & Ury, *supra* note 5, at 22-23.
- 68 See id. at 26-27.
- 69 Id. at 27.
- 70 See id. at 28 (stating that “[f]ace-saving reflects a person's need to reconcile the stand he takes in a negotiation or an agreement with his principles and with his past words and deeds”).
- 71 See id. at 31.
- 72 See id. at 30-31.
Making your feelings or theirs an explicit focus of discussion will not only underscore the seriousness of the problem, it will also make the negotiations less reactive and more ‘pro-active.’ Freed from the burden of unexpressed emotions, people will become more likely to work on the problem.
Id. at 30.
- 73 See id. at 31.

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- 74 See id.
- 75 See id.
- 76 See id. at 31-32.
- 77 See id. at 32.
- 78 See id.
- 79 See id. at 34.
- 80 See Johnsen, *supra* note 63, at 835.
- 81 See Fisher & Ury, *supra* note 5, at 34.
- 82 See id. at 34-35. Furthermore, by repeating the opposing party's argument or position, a negotiator conveys understanding, and may then, hopefully, discuss weaknesses with the position or argument with less irrational opposition. See id.
- 83 See id. at 36.
- 84 See id. For example, rather than telling the IRA that they are acting belligerently by refusing to decommission, negotiations may be better advanced by telling the IRA that their refusal to give up any of their weapons makes Unionists feel threatened. See id.
- 85 Id. (noting that other times, "the problem is not too little communication, but too much. When anger and misperception are high, some thoughts are best left unsaid.").
- 86 See id. at 40-41.
- 87 See id. at 42.
- 88 See id.; see also Johnsen, *supra* note 63, at 836 (maintaining that a party's position is not necessarily what they need, but rather what they assert in an attempt to get what they need or want. Alternatively, GTY analysis suggests that negotiators should communicate their needs rather than their positions, and that WERB agreements will result). However, Fisher and Ury acknowledge what some commentators have questioned: the wisdom of communicating interests because of the potential for hard bargainers to use this information to the detriment of the disclosing party. See Fisher & Ury, *supra* note 5, at 130-43.
- 89 See Fisher & Ury, *supra* note 5, at 47-49. Moreover, the "most powerful interests are basic human needs." Id. at 49. For example, in the negotiations over the future in Northern Ireland, Protestant leaders tend to ignore the Catholics' need for both belonging and recognition, for being accepted and treated as equals. In turn, Catholic leaders often appear to give too little weight to the Protestants' need to feel secure. Treating Protestant fears as 'their problem' rather than as a legitimate concern needing attention makes it even more difficult to negotiate a solution.
Id. at 49-50.
- 90 See id. at 50-55.
- 91 See id. at 56-57 (stating that parties should not assume that a negotiation is a "fixed-sum game").
- 92 See id. at 59 (stating that "[f]or a negotiator to reach an agreement that meets his own self-interest he needs to develop a solution which also appeals to the self-interest of the other").
- 93 Id. at 60. Separating the invention of options from judgement is done by brainstorming or otherwise generating several options before deciding. See id. at 65-66. Thus, it is easier to select the best option from a list of as many viable options as possible. See id. Also, mutual gains may be found in either shared interests or by taking advantage of differences between the parties. See id. 70-76. Finally,

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- finding an option that is as painless for the other side to accept as possible increases the chances of reaching a WERB agreement.
See id. at 76-77.
- 94 See id. at 82-83.
- 95 See id.
- 96 See id.
- 97 See id. at 87, 90.
- 98 See Deaglan de Breadun, Review 1998, Irish Times, Dec. 29, 1998, at 51 (“[S]uch was the stalemate over decommissioning that it began to appear the whole process was going down the tubes. Republican pride would apparently not countenance handing over a single bomb or bullet; Unionist distrust found confirmation in the knowledge that the IRA’s arsenal remained intact.”) [[hereinafter de Breadun VII]; Cullen I, supra note 43, at A14-15.
- 99 See Cullen I, supra note 43, at A14-15.
- 100 This Article focuses primarily on the stalemate as it existed from the time the GFA was reached in April 1998 until the Summer of 1999 when the negotiators took a hiatus that ended with the Mitchell Review in September 1999 [hereinafter “stalemate period”]. Events in Northern Ireland occurred with great rapidity at the end of 1999 and during the early part of 2000, making it impossible for this Article to be as current as the daily press. Fortunately, application of GTY analysis does not require real-time news reporting. The lessons to be learned from principled bargaining based on the negotiations conducted during the stalemate period are equally applicable to existing and future decommissioning negotiations.
- 101 See Mullin I, supra note 7 (acting primarily through David Trimble, leader of the Ulster Unionist Party (UUP)); Niall O’Dowd, Decommissioning Ultimatum Guaranteed to Stiffen Spines, Irish Times, Apr. 7, 1999, at 14 [[hereinafter O’Dowd II]; Cullen I, supra note 43, at A14-15.
- 102 The IRA was not a party to the GFA. However, the Sinn Fein was a party to the GFA, and they are widely recognized the IRA’s political wing. See John Bruton, [Why Decommissioning is a Real Issue](#), 22 *Fordham Int’l L.J.* 1200, 1202-03 (1999). Indeed, membership of the two organizations overlaps. See id.
- 103 See Mullin I, supra note 7, at 17; Clare Murphy, Missed Executive Deadline is a Disappointment, says Adams, Irish Times, Apr. 2, 1999, at 8; The Path to Peace: The Agreement, Irish Times (visited Apr. 30, 2000) < <http://www.irish-times.com>>.
- 104 See David McKittrick, Paramilitary Groups Cling to Arsenals, The Independent (London), Oct. 15, 1998, at 9 [hereinafter McKittrick II]; Cullen I, supra note 43, at A14-15.
- 105 McKittrick II, supra note 104, at 1.
- 106 See Ulster’s Fragile Peace Persists, Canberra Times, Dec. 15, 1998, available in 1998 WL 24344527 (“[E]ither the Unionists will have to accept that Sinn Fein has a legitimate role in government and trust that disarmament will eventually follow, or Sinn Fein will have to persuade the Republican paramilitaries to begin decommissioning, and trust that the rewards of government will eventually repay the gesture.”).
- 107 See de Breadun VI, supra note 46, at 1.
- 108 See McKittrick II, supra note 104, at 9 (noting that “the decommissioning issue seems to have moved out of the security sphere and into the field of pure politics”).
- 109 See The Good Friday Agreement is Dying, supra note 35, at 17.
- 110 See Gerry Adams, UUP has Blocked Establishment of Institutions it Agreed Last Easter, Irish Times, Mar. 12, 1999, at 14 [hereinafter Adams I].

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- 111 See *id.*; Katherine Butler, *Ahern Attacks Unionists' Intransigence*, *The Independent* (London), Dec. 12, 1998, at 2; Northern Irish Head Trimble Slams Adams' "Nazi-like Propaganda," *Agence France-Presse*, Jan. 9, 1999, available in [1999 WL 2525943](#).
- 112 See Niall O'Dowd, *Anger over British Moves on RUC*, *Irish Voice*, June 9, 1998, at 12 [hereinafter O'Dowd III]; Suzanne Breen, *Republicans Reject Arms Demand - Decommissioning is Still a Major Problem Among Provisional IRA Grassroots*, *Irish Times*, Apr. 13, 1999, at 5 [hereinafter Breen I].
- 113 See Fisher & Ury, *supra* note 5, at 22-29.
- 114 See de Breadun VII, *supra* note 98, at 51. These insults are counterproductive to the decommissioning negotiations, even if they are politically expedient for the negotiators in dealing with their constituencies. See Mitchell, *supra* note 15, at 120-21.
- 115 The primary negotiators in the Northern Ireland peace process are politicians who must balance the needs of effective negotiating with the demands of their political constituencies. See Breen I, *supra* note 112, at 5; David McKittrick, *Unionist Rift Exposes Ulster Tension*, *The Independent* (London), Jan. 6, 1999, at 6 [hereinafter McKittrick III].
- 116 See Dunn & Nolan-Haley, *supra* note 18, at 1381; Millar I, *supra* note 39, at 11.
- 117 See Frank Millar, *IRA Claims on Missing Weapons "Confirm Decommissioning Need,"* *Irish Times*, Feb. 5, 1999, at 9 [hereinafter Millar II]; Robert P. Connolly, *Adams Stands on Shaky Precipice of Compromise*, *Boston Herald*, Mar. 21, 1999, available in [1999 WL 3393392](#); Breen I, *supra* note 112, at 5.
- 118 See Breen I, *supra* note 112, at 5 (stating that "[t]hose who know the Sinn Fein leadership well don't doubt they are willing to make a gesture on decommissioning to help the peace process...[but] they are in a difficult position" with hardline Republicans).
- 119 See *id.*
- 120 See *The Good Friday Agreement is Dying*, *supra* note 35, at 17 (stating that Gerry Adams may risk "stretch[ing] the Republican constituency again" if David Trimble was "in the loop" because the Republican leader wanted to make sure that they both "jump together" on the decommissioning issue).
- 121 But see Fisher & Ury, *supra* note 5, at 31 (stating that "if a negotiator makes an angry speech and thereby shows his constituency that he is not being 'soft,' they may give him a freer hand in the negotiation [because he] can then rely on a reputation for toughness to protect him from criticism later if he eventually enters an agreement"). However, Fisher and Ury may not have had a situation like Northern Ireland in mind. Public demonstrations of toughness by the negotiators in Northern Ireland is likely to have the effect of calcifying constituencies and eliminating options, and thereby decreasing the range of possible agreement. Cf. Marc Galanter & Mia Cahill, *"Most Cases Settle": Judicial Promotion and regulation of Settlements*, 46 *Stan. L. Rev.* 1339, 1361-62 (1994) (discussing the effect of increasing or decreasing the settlement range).
- 122 See Fisher & Ury, *supra* note 5, at 36-37.
- 123 Adams I, *supra* note 110, at 14.
- 124 For example, the following excerpt from a speech given by Gerry Adams to a Sinn Fein *ardfheis* (convention) is the type of non-agitational rhetoric that is needed to mitigate the adversarial ambiance pervading decommissioning negotiations thus far: Sinn Fein is not a Catholic party. We uphold the right to civil and religious liberty for all and we want to see the emancipation of Catholics, Protestants and Dissenters.... Today we cleared the way for the future. Tomorrow we start to build the future. The future is freedom. Together let us build a bridge to freedom.
Gerry Adams, *Adams Stresses Need to Reassess Tactics Until Goals Achieved*, *Irish Times*, May 11, 1998, at 6 [hereinafter Adams II].
- 125 See David McKittrick, *This Row About Guns will Not Unravel the Process*, *The Independent* (London), Dec. 15, 1998, available in [1998 WL 21751543](#) [hereinafter McKittrick IV]. However, some people in Ireland may not necessarily want peace under the GFA. See Martin Fletcher, *IRA Steps up Exile Punishments*, *Irish Times*, Mar. 12, 1999, at 12; Lloyd, *supra* note 25. Some people have only

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known conflict, and are afraid of what peace would bring. See *id.* Others oppose peace under the GFA because the current system affords them money or power that they would not realize in peacetime i.e. paramilitary leaders that have status through fear. See *id.*

- 126 See McKittrick II, *supra* note 104 (stating that “one widely held view ... is that it is inconceivable that any issue, no matter how important, could be allowed to place the entire process at risk”); Geoghegan-Quinn II, *supra* note 42, at 14 (stating that “[t]he populations, North and South, weren't too concerned with the individual clauses of the deal, only with what it promised. They didn't vote for the agreement, they voted for peace, for progress and for optimism.”).
- 127 See Walsh, *supra* note 32, at 59.
- 128 See de Breadun VII, *supra* note 98, at 51 (stating that “privately, senior Unionists ‘didn't give tuppence’ about decommissioning but felt obliged to keep mouthing the formula because it was essential to keep the hardliners off their backs”). However, by playing to the hardliners, the negotiators perpetuate counterproductive positional bargaining that only makes agreement more difficult to obtain. Negotiators would advance the peace process further by finding ways to mitigate or neutralize hardliners and the extreme views that decrease the range of possible agreement.
- 129 See Mary Holland, *Obstacles to New NI Institutions Must be Overcome*, *Irish Times*, Feb. 4, 1999, at 18 (visited Apr. 30, 2000) <<http://www.irish-times.com>> [hereinafter Holland I].
- 130 See Deaglan de Breadun, *As Both Sides Stand Firm, de Chastelain May Hold the Key to Breaking the Weapons Deadlock*, *Irish Times*, Oct. 2, 1998, at 8 (“Republicans striking a warning note; Unionists digging in their heels: all very familiar. Despite the urgings of grassroots in both communities in the aftermath of the Omagh blast, when they told the politicians to ‘get on with it’, stasis and stalemate are the order of the day.”) [hereinafter de Breadun VIII].
- 131 See Fisher & Ury, *supra* note 5, at 29 (“[E]motions on one side will generate emotions on the other. Fear may breed anger, and anger, fear. Emotions may quickly bring a negotiation to an impasse or an end.”).
- 132 See *The Path to Peace I*, *supra* note 22.
- 133 See *The Path to Peace: An Historical Perspective*, *Irish Times* (visited Apr. 20, 2000) <<http://www.irish-times.com>> [hereinafter *The Path to Peace II*]; Dunn & Nolan-Haley, *supra* note 18, at 1373. Although the struggle is nominally between Catholics and Protestants, the real strife is more likely the by-product of historic competition over scarce resources that manifested itself along familial and later religious lines. See Kevin Cullen, *Reason for Hope: Why Peace in Northern Ireland Now Has a Chance*, *Boston Globe*, Dec. 20, 1998, available in 1998 WL 22240369 [hereinafter Cullen II]; Fisher & Ury, *supra* note 5, at 164 (“[M]any situations only appear to be ‘religious’ conflicts. The conflict in Northern Ireland between Protestants and Catholics ... is not over religion. [Rather], religion serves as a handy boundary line for dividing one group from another. That cleavage is reinforced as it is used to divide where people live, where they work, who their friends are, and for whom they vote.”). Accordingly, GTY analysis suggests that negotiation between Protestants and Catholics in Northern Ireland, where religion only plays a nominal aspect of the dispute, “is highly desirable, as it improves the chance that they will be able to reach pragmatic accommodations that are to their mutual interest.” *Id.*
- 134 See Fisher & Ury, *supra* note 5, at 29-30. However, it is likely that negotiators from both sides are more than well aware of the emotions of both Unionists and Republicans. Therefore, the negotiators must acknowledge these emotions as reality, and address them directly rather than ignoring them. See *id.* at 29-30, 49-50.
- 135 Emotion is inextricably related to the conflict in Northern Ireland. See Jim Dee, *Royal Ulster Constabulary's Future Proves a Divisive Issue*, *Boston Herald*, Oct. 18, 1998, available in 1998 WL 7360523 [hereinafter Dee II]. Also, there is always the danger of another event will create an acute emotional reaction, such as the Omagh bombing, that could potentially derail the peace process. See Kevin Cullen & John O'Farrell, “Real IRA” Claims Hit that Killed 28, *Boston Globe*, Aug. 19, 1998. The negotiators, although painfully aware of the emotional aspects of the conflict, must endeavor to prevent their own personal emotions from interfering with the task at hand.
- 136 See Fisher & Ury, *supra* note 5 (suggesting that “instead of interrupting polemical speeches or walking out on the other party,” one side should “decide to control [themselves], sit there, and allow [the other side] to pour out their grievances”).

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- 137 See *The Good Friday Agreement is Dying*, supra note 35, at 17 (stating that the GFA will die “[u]nless one of the key protagonists can find the courage to risk breathing new life into it”).
- 138 See Fintan O’Toole, *It’s up to the Gunmen to Sort Out Arms Issue*, *Irish Times*, Mar. 12, 1999, at 14 (visited Apr. 30, 2000) <<http://www.irish-times.com>> (“[B]y extracting Loyalist weapons in return for its own, the IRA could finally give substance to its claims of defending the Catholic community. By giving up some of its arsenal as a way of destroying some of the IRA’s, the Loyalists could live up to their rhetorical self-image as protectors of Protestants. By solving a political problem, both sides could show they are ready for democratic politics.”). Accordingly, it has been suggested that the paramilitary groups negotiate a plan to decommission amongst themselves. See *id.* Furthermore, coordinated decommissioning by paramilitaries could be touted as a mutual stride towards peace rather than as a surrender of arms. See *id.* This type of leadership is needed on the decommissioning issue, especially where positional bargaining has failed.
- 139 See *Fisher & Ury*, supra note 5, at 31.
- 140 See *id.*
- 141 See *id.* at 32.
- 142 See *id.*
- 143 See Kevin Cullen, *Sinn Fein’s Adams Cites Arsenal Issue*, *Boston Globe*, Nov. 29, 1998, at A3 (noting that Loyalist paramilitaries “have said they won’t turn in their weapons even if the IRA does”) [hereinafter Cullen III]; Jim Dee, *N. Ireland Loyalists Say They’ll Keep Their Guns*, *Boston Herald*, Oct. 13, 1998 [hereinafter Dee III]. Decommissioning talks have focused on the IRA because of the fact that Sinn Fein had two ministers named to the new Northern Ireland Executive. See *id.* However, inasmuch as Republicans may view Unionists and Loyalist paramilitaries as a “them” unified in their opposition to the IRA - much the same way that Unionists view the IRA-Sinn Fein relationship - Loyalist paramilitaries should receive similar pressure to decommission to avoid singling out the IRA and contributing to their “ourselves alone” mindset. See *id.*
- 144 See *Breen I*, supra note 112, at 5.
- 145 Getting the IRA and mainstream Loyalist paramilitaries to decommission is a Herculean task in itself. Getting splinter groups like the REAL IRA and others to decommission may be impossible. However, inasmuch as decommissioning is more of a political issue than a security concern, the negotiators may not need such universal decommissioning. See John Mullin, *Decommissioning Arms: Sleeping Dog on a Heap of Explosives Peace in Ireland is Not a Done Deal*, *The Guardian* (London), Oct. 15, 1998, at 17 [hereinafter Mullin II]; *The Path to Peace: News, Trimble Has Made Himself Loyal IRA Cheerleader*, *Irish Times*, (visited Apr. 30, 2000) <<http://www.irish-times.com>> (noting that decommissioning is “an issue which security experts on both sides of the border agree is purely symbolic rather than practical [because] weapons can easily be replaced”)[hereinafter *The Path to Peace III*].
- 146 See *Mullin I*, supra note 7. See also Robert P. Connolly, *New Government Plan is Moment of Truth for Northern Ireland*, *Boston Herald*, Feb. 14, 1999, available in [1999 WL 3390227](#). The Unionists have responded by stating that the GFA requires all parties in good faith to use their influence to decommission. See *id.* Further, Unionists contend that the Sinn Fein’s influence over the IRA is really confluence because of the substantial overlap in the membership of the two organizations. See Dick Walsh, *Questions Requiring Answers from SF*, *Irish Times*, Apr. 10, 1999, at 14 (visited Apr. 30, 2000) <<http://www.irish-times.com>>.
- 147 See *de Breadun VII*, supra note 98 (stating that some Unionists have “questioned the wisdom of spoiling the ship for a half-pound of semtex”).
- 148 See Martin Fletcher, *Clinton Orders Adams to Give up Arms*, *Times of London*, Mar. 13, 1999, available in [1999 WL 7979433](#).
- 149 See *McKittrick II*, supra note 104; *The Path to Peace: News, Process Kept Going by Refusal to Accept Failure*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>> (stating that “[t]he IRA could take the heat out of the situation by unilaterally destroying a quantity of arms and explosives before the end of January [2000]”)[hereinafter *The Path to Peace IV*]. However, even token decommissioning risks a serious hardliner reaction. See *Breen I*, supra note 112, at 5.

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- 150 See John Mullin, *Guns, IRA Pride and Peace in Our Time*, *The Guardian* (London), Apr. 14, 1999, available in [1999 WL 16875215](#) [hereinafter *Mullin III*].
- 151 See *Protestant Armed Group Begins Disarmament*, *Agence France-Presse*, Dec. 18, 1998, available in [1998 WL 16662569](#) (noting that the LVF made such a token gesture). Thus, rather than equating symbolic decommissioning with defeat or surrender, the Republicans should assert that they are leading the peace process forward. This approach may be supported by the fact that the majority of Catholics want peace and are less concerned about the political significance of decommissioning to Republican hardliners. See *Geoghegan-Quinn II*, *supra* note 42. This sentiment was especially strong in the aftermath of the Omagh bombing in August 1998. See Niall O'Dowd, *Throwing the Real IRA a Lifeline?*, *Irish Voice*, Sept. 8, 1998, available in [1998 WL 11398896](#) [hereinafter *O'Dowd IV*]. See also Chris Finnegan, *Shifts May Herald the Dying Throes of Terrorism*, *Irish Times*, Aug. 19, 1998, at 14. Popular support for Republican paramilitary violence dramatically waned after this unprovoked act of violence. See *id.* Thus, popular approval of IRA decommissioning could be used to politically neutralize the hardliners by demonstrating their minority status in an attempt to make violent reaction contrary to the hardliners' political self-interest. See *id.*; Martin Fletcher, *Politicians Hail Ceasefire Call from Real IRA*, *Times of London*, Sept. 9, 1998, available in [1998 WL 4860856](#). Furthermore, by couching decommissioning in terms of "taking command" of the peace process, and "challenging" Unionists to do the same, the IRA could attempt to supplant its hardline adherents. However, such "negotiation jujitsu" is easier said than done. See Fisher & Ury, *supra* note 5, at 108-11.
- 152 See Sean O'Neill, *McGuinness Joins International Body On Arms Handover*, *Daily Telegraph* (London), Sept. 3, 1998, available in [1998 WL 3043434](#). Furthermore, demands by Unionists and Nationalists in the Irish government only solidify the IRA's resolve to refuse to decommission before May 2000. See *id.*
- 153 See *de Breadun VII*, *supra* note 98. David Trimble made it politically feasible to include Sinn Fein in the Northern Ireland Executive when he brokered a deal in November 1999. See Shawn Pogatchnik, *Unionists Clear Way To Share Leadership*, *Buffalo News*, Nov. 28, 1999, at 1. Trimble received support from 58% of his party when he promised to resign if the IRA had not begun decommissioning by the time the UUP reconvened in February 2000. See *id.* The IRA could avoid a showdown by making a token gesture of decommissioning. Such a gesture would greatly defuse the political tension among Unionists, thus making further implementation of the GFA more likely. Furthermore, pro-GFA Republicans should help Trimble stave off an insurrection from within the UUP because "[w]ithout David Trimble, Sinn Fein leaders know, the end of the peace process that they worked so hard to create is inevitable." See *The Path to Peace III*, *supra* note 145. Consequently, an IRA peace gesture of token decommissioning would eliminate major roadblocks on the path ahead.
- 154 See Michael Page, *A Unique Irish Solution Needed on Arms and Prisoners*, *Irish Times*, May 30, 1998, at 10 (visited Apr. 30, 2000) <<http://www.irish-times.com>>. Destruction of a small amount of offensive weapons would be a significant gesture that would do much to thaw recently icy relations between the Republican and Unionist negotiators.
- 155 See *Breen I*, *supra* note 112, at 5.
- 156 See *Mullin I*, *supra* note 7.
- 157 See *id.*; *The Path to Peace III*, *supra* note 145 (noting that the IRA "have shown themselves remarkably unimpressed when compulsion rather than persuasion is adopted as a political tool"). Unionist demands only resulted in Republican line-drawing, which confirmed Unionist fears, thus resulting in more vehement Unionist demands. Cf. Fisher & Ury, *supra* note 5, at 108. Rejecting their position only locks them in. Defending your proposal only locks you in. And defending yourself sidetracks the negotiation into a clash of personalities. You will find yourself in a vicious cycle of attack and defense, and you will waste a lot of time and energy in useless pushing and pulling. *Id.* (emphasis in the original).
- 158 See *O'Dowd II*, *supra* note 101, at 14.
- 159 See *Breen I*, *supra* note 112, at 5. Republicans viewed Unionist demands as aggressive and unwarranted under the GFA. Republican constituencies would not allow their negotiators to yield to Unionist demands. See *id.* The Unionist demands for early decommissioning only solidified positional bargaining by entrenching themselves and their Republican counterparts into rigid positions. See Fisher & Ury, *supra* note 5, at 137 ("[T]hreats are pressure. Pressure often accomplishes just the opposite of what

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is intended to do; it builds it pressure the other way. Instead of making a decision easier for the other side, it often makes it more difficult.”).

- 160 See O'Dowd II, *supra* note 101, at 14. David Trimble deftly maneuvered around this roadblock by allowing Sinn Fein to participate in the Northern Ireland Executive prior to decommissioning. See Peter Taylor, *Roadblock Postponed*, *The Guardian* (London), Nov. 29, 1999. However, Trimble's promise to resign if the IRA does not start decommissioning by February 2000 is viewed by Republicans as a unilaterally imposed probationary deadline that was not discussed during the Mitchell Review. See Suzanne Breen, *SF to Seek Meeting with Trimble to Discuss Post-dated Resignation Letter*, *Irish Times*, Dec. 1, 1999, at 4 [hereinafter Breen II]. Therefore, the incorporation of Sinn Fein ministers into the Northern Ireland Executive has only deferred the decommissioning showdown. See Taylor, *supra*.
- 161 See Fisher & Ury, *supra* note 5, at 137.
- 162 See O'Dowd II, *supra* note 101, at 14.
- 163 See Fisher & Ury, *supra* note 5, at 28-29 (describing face-saving as the need to reconcile a negotiator's stance or position in an agreement with past words and actions, especially where the negotiator is answerable to constituencies). Moreover, face-saving is especially important in Northern Ireland because the acrimonious decommissioning debate has resulted in positional calcification by both Republicans and Unionists (although it has been more of a tennis match of demands and diatribes than a serious debate or negotiation over the substantive issues). See de Breadun IV, *supra* note 40, at 6. Thus, both sides may be “continu[ing] to hold out not because the proposal [[s] on the table [are] inherently unacceptable, but simply because they want to avoid the feeling or the appearance of backing down to the other side.” Fisher & Ury, *supra* note 5, at 28-29. Consequently, GTY analysis suggests that the negotiators phrase or conceptualize the issues differently in order to allow each side to accept proposals without excessive internal dissension. See *id.*
- 164 See Fisher & Ury, *supra* note 5, at 29. Allowing the other side to save face is a tactic characterized by GTY under “perception problems.” See *id.* at 28. However, this analysis discusses saving-face in the context of the people problem of “emotion” because it is especially applicable to the visceral rhetoric of the decommissioning debate, although it is also equally applicable to perception problems involved in the post-GFA negotiations.
- 165 See *id.* at 29. David Trimble's political dexterity exemplified GTY face-saving when he allowed Sinn Fein to participate in the Northern Ireland Executive prior to IRA decommissioning. See Taylor, *supra* note 160. Trimble temporarily abandoned his party's “no guns, no government” principle when he did so. See *id.* This move allowed the IRA to save-face by avoiding giving in to the Unionist demand of decommissioning prior to Sinn Fein participation in the Executive. Although the IRA viewed the February 2000 deadline as yet another Unionist deadline, it was a political concession necessary for Trimble to go as far as he did. Therefore, Republicans could help Trimble save-face with his party by making a symbolic decommissioning gesture. The IRA did allow Trimble to save-face somewhat when they named a representative to the IICD. See de Breadun VI, *supra* note 46, at 1.
- 166 See Eamonn Mallie, *Trimble Still Adamant on Guns*, *Irish Voice*, Oct. 13, 1998 (noting that some Unionists feel that “sooner or later [Trimble] will capitulate on the question of guns and take a risk in allowing Sinn Fein into the Executive in advance of decommissioning”). One way to abandon positional bargaining that allow both sides to save-face would be to act simultaneously, to “jump together.” See Noel McAdam, *Jump Together Poll Urges*, *Belfast Telegraph*, Sept. 26, 1999, at 1 (indicating that 64% of Protestants supported the idea of the UUP and the SF jumping together on the decommissioning/Northern Ireland Executive issue). However, this approach would result in its own difficulties inasmuch as “the parties have widely different interpretations of a ‘jump together’ scenario.” See *id.*
- 167 See Fisher & Ury, *supra* note 5, at 28-29.
- 168 See Vincent Browne, *Impasse in North Cannot be Allowed to Persist*, *Irish Times*, Mar. 17, 1999, at 14 (visited Apr. 30, 2000) <<http://www.irish-times.com>>. Unionist demands for decommissioning as a condition precedent to Sinn Fein's assumption of ministerial duties in a Northern Ireland Executive are politically motivated. See *id.*; Liam Clarke et al., *Over to You Gerry*, *Sunday Times* (London), Dec. 20, 1998 (stating that “[t]he security assessment in Northern Ireland is that decommissioning is a political and not a security priority”). In other words, decommissioning is “a synonym for Unionist apprehension over the authenticity of [the

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Republican[s] commitment to peace.” Browne, *supra*. Rather than fighting over the respective positions on decommissioning, the parties should find a solution that satisfies their interests. See *id.* Thus, the Unionists should be satisfied if the Republicans expressly stated that the war was over, and that they would not unilaterally renew violence. Acts may not speak louder than words in this case because, the token gesture of decommissioning sought would make no practical difference in the Republicans' ability to continue fighting. See *id.* Even complete decommissioning would make little difference if the Republicans wanted to resume hostilities. See Andrew Greeley, *Irish Arms an Explosive Issue that Could Derail Good Friday Agreement*, *Times Union* (Albany), Oct. 10, 1998. The physical tools for warfare can always be replenished, and therefore, the Unionists should care more about eliminating the Republicans' will to fight. See *id.* Accordingly, Unionists' demands are counterproductive inasmuch as they are kicking the Republican dog to see if it is sleeping. See Mullin I, *supra*, note 7. The best indication of the Republican desire for peace is the absence of war. See Browne, *supra*. Mainstream Republicans have observed a ceasefire since July 1997. See *id.* Therefore, the Unionists should accept a Republican statement that they have taken the gun out of Irish politics. Likewise, the Republicans should demonstrate the strength of their convictions by conditioning Republican participation in the Executive upon continued pacification. Therefore, if both sides cling to their positions despite their interests in achieving decommissioning, and ultimately peace, history will repeat itself, and violence will re-emerge in Northern Ireland. See *id.* Unionists stopped demanding decommissioning to some extent when they allowed Sinn Fein to participate in the Northern Ireland Executive prior to decommissioning. See Taylor, *supra* note 160. However, the Republicans still view the February 2000 deadline as an unjustified Unionist demand. See Breen II, *supra* note 160, at 4.

169 See George Jones et al., *Blair Gives Ground on IRA Arms Handover*, *Daily Telegraph* (London), Mar. 19, 1999 (stating that Tony Blair “believes that if there was less emphasis on the handover of weapons as a ‘precondition’, it would make it easier for the Republican movement to accept decommissioning”).

170 See Deaglan de Breadun, *Initiative on Arms May be Taken in the Next Fortnight*, *Irish Times*, Oct. 14, 1998, at 6 (stating that pressure on the IRA to decommission was eased considerably when Loyalist paramilitaries refused to decommission)[hereinafter de Breadun IX]. Unionists recently applied such pressure by urging the Ulster Freedom Fighters (UFF) to appoint a representative to the IICD. See Clare Murphy, *The Path to Peace: News, Trimble Urges UFF to Appoint a Go-between*, *Irish Times* (visited Apr. 30, 2000) <<http://www.irish-times.com>>.

171 See *A New Crisis in the North*, *Irish Voice*, Oct. 6, 1998, at 12 (stating that decommissioning goes to the heart of the IRA's philosophy because “[t]hey believe that if they hand over any weapons short of a final agreed settlement they will be seen to have surrendered. It is their belief that the British are once again pursuing a militaristic path, trying to force some concession from them which is clearly not in the [GFA] in order to proclaim a victory of sorts”).

172 See Jim Dee, *Leader of Irish Lawyer's Proclaimed Killers Slain*, *Boston Herald*, Mar. 18, 1999 [hereinafter Dee IV]. Two days after the assassination of Catholic civil rights attorney, Rosemary Nelson, the leader of the paramilitary group suspected in her death, Frankie Curry, was himself killed. See *id.* A mainstream Loyalist paramilitary group was suspected of killing Curry. See *id.* Given the violent political history in Northern Ireland, and the enforcement role played by Republican paramilitary groups in their neighborhoods, one might expect the mainstream paramilitary groups to enforce the ceasefire against fringe paramilitary groups. Cf. *id.* (describing the retaliatory assassination of Frankie Curry by Loyalists and subsequent statement by a Unionist leader absolving the IRA of responsibility for the retaliatory assassination). Ideally, negotiations and democratic machinations will eventually take the gun out of Irish politics. However, paramilitary groups opposing the GFA may attempt to derail negotiations by violent means, such as the bombing at Omagh in August 1998. The peace process is best served when the parties avoid retaliating in kind. See Finola Lynch, *The Drive for Peace Must be Preserved*, *The Independent* (London), Aug. 17, 1998, at 15. This approach was effective in the wake of the Omagh bombing because negative public opinion deprived the paramilitary group responsible of grassroots support. See O'Dowd III, *supra* note 151. Although paramilitary self-policing of splinter groups, such as the murder of Frankie Curry, may prevent the GFA's derailment in the short-term, it only serves to propagate violence as a legitimate political response, thus diserving peace in the long-term. See Lynch, *supra*.

173 See O'Dowd IV, *supra* note 151.

174 See de Breadun IV, *supra* note 40, at 6.

175 See George J. Mitchell, *Peace and Reconciliation in Northern Ireland*, *Boston Globe*, Dec. 19, 1999, at C7.

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- 176 See Cullen III, supra note 143, at A3; Breen II, supra note 160, at 4. The GFA requires decommissioning “within two years following [the GFA’s] endorsement in referendums North and South” that were held in May 1998. GFA text, supra note 37, at 64-67. However, this does not preclude starting decommissioning prior to May 2000, it only requires that decommissioning be completed by that date, and thus the Unionists desire to begin decommissioning is not entirely outrageous. Again, this semantic dispute between the parties regarding the GFA’s requirements demonstrates how positional bargaining has impeded productive negotiations in Northern Ireland.
- 177 See Fisher & Ury, supra note 5, at 50-52; Holland I, supra note 129, at 18 (referring to a news article authored by a group called Community Dialogue). The Community Dialogue article is “scrupulously fair in laying out the hopes and fears of both communities.” Id. (“[I]t appeals to nationalists and Unionists to try and look again at the problem of decommissioning from the other side’s point of view, to remember what has already been achieved in the peace process (including the concessions made by all parties), and to consider what [would] be lost if the agreement fails.”).
- 178 See Fisher & Ury, supra note 5, at 50-52. See also id. at 171-75 (discussing ways to invent options without making commitments); Holland, supra note 129, at 18 (noting that Community Dialogue advocates examine the debate on decommissioning issues). Community Dialogue appears to adopt a principled bargaining position by suggesting that the negotiators learn “not to box each other into impossible positions.” Id.
- 179 See Page, supra note 154, at 10.
- 180 See Liam Clarke & Vincent Kearney, Hard-hitting Clinton Tells Adams’ “IRA Must End War,” Sunday Times (London), Mar. 21, 1999. See also David McKittrick, Devolution for Ulster, The Independent (London), Nov. 29, 1999, at 2 (quoting SDLP leader John Hume as stating that “The real solution starts once we start working together because then the real healing process starts. Trust will be built steadily”)[hereinafter McKittrick V]; Gerry Moriarty, Trimble Says Executive Can Begin if IRA Names Intermediary, Irish Times, Nov. 17, 1999, at 7 (visited Apr. 30, 2000) <<http://www.irish-times.com>> (“UUP and Sinn Fein, as part of a mutual step-by-step approach, issued separate statements designed to build confidence and resolve the impasse over decommissioning and devolution.”).
- 181 The trust required to reach the GFA, and to maintain negotiations after the Mitchell Review, was produced by George Mitchell. See No Deal Better Than a Bad Deal, Irish Voice, Apr. 7, 1998, at 10 (stating that Mitchell “built up goodwill and trust on all sides during” mediation of the GFA); Cullen I, supra note 43; Dunn & Nolan-Haley, supra note 18, at 1379, 1381-82.
- 182 See McKittrick II, supra note 104, at 9.
- 183 See Holland I, supra note 129, at 18 (stating that “both David Trimble and Gerry Adams are coming under increasing pressure to make the historic concession that could move the situation forward”); The Path to Peace IV, supra note 149.
- 184 The GFA states that:
[a]ll participants accordingly reaffirm their commitment to the total disarmament of all paramilitary organisations. They also confirm their intention to continue to work constructively and in good faith with the Independent Commission, and to use any influence they may have, to achieve the decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement.
The Path to Peace: The Agreement, Irish Times (visited Apr. 30, 2000) <<http://www.irish-times.com>> [hereinafter The Path to Peace V].
- 185 Cullen III, supra note 143, at A3.
- 186 A New Crisis in the North, Irish Voice, Oct. 6, 1998, at 12.
- 187 See id. (stating that “[e]ven some Unionists agree[d] that the letter of the law as framed on Good Friday [was] with Sinn Fein”).
- 188 See id.; Adams I, supra note 110, at 14.
- 189 Fisher & Ury, supra note 5, at 22 (concluding that “[f]ears, even if ill-founded, are real fears and need to be dealt with...[and that] [h]opes, even if unrealistic, may cause a war”).

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- 190 See Martin Fletcher, *The End is Nigh for a Chance of Peace*, *Times of London*, Feb. 5, 1999.
- 191 See *Holland I*, *supra* note 129, at 18.
- 192 See *id.*; Fisher & Ury, *supra* note 5, at 23. It is not enough for the negotiators to know that the other side perceives things differently, that is something that they are painfully aware of. See *id.* Rather, Republicans and Unionists must “understand empathetically the power of [each other’s] point of view and to feel the emotional force” of such beliefs if they want to better prepare themselves to influence the other side. See *id.* Acknowledging the opposing side’s perceptions “allows you to reduce the area of conflict, and it also helps you advance your newly enlightened self-interest.” *Id.*
- 193 See *Breen I*, *supra* note 112, at 5. For example, many Republicans perceive decommissioning as a precondition to participating in the Northern Ireland Executive as surrender. See *id.* Some Republicans view decommissioning as an implicit assumption of guilt, as an admission that their cause was illegitimate. See *id.* Furthermore, many Republicans feel that IRA guns brought Sinn Fein to the table in the first place, and they are hesitant to give up something they perceive to be their major bargaining chip. See *id.* Therefore, negotiations concerning a decommissioning timetable should attempt to alleviate these concerns. See *The Good Friday Agreement is Dying*, *supra* note 35, at 17.
- 194 See Fisher & Ury, *supra* note 5, at 23-24.
- 195 See *id.* at 25.
- 196 See *id.*
- 197 See *id.*
- 198 See *Adams I*, *supra* note 110, at 14.
- 199 See *Cullen III*, *supra* note 143, at A3.
- 200 See *Breen I*, *supra* note 112, at 5.
- 201 See Fisher & Ury, *supra* note 5, at 23-24, 54-55.
- 202 See *Adams I*, *supra* note 110, at 14.
- 203 See *Browne*, *supra* note 168, at 14.
- 204 See *Mullin I*, *supra* note 7 (stating that the Irish government suggested negotiating the timetable for decommissioning rather than demanding immediate decommissioning).
- 205 See *Prospect of Decommissioning a Complete Non-starter in Wake of Solicitor’s Death*, *Irish Times*, Mar. 16, 1999, at 6 (visited Apr. 30, 2000) <<http://www.irish-times.com>> [hereinafter *Prospect of Decommissioning*]; *Browne*, *supra* note 168, at 14.
- 206 See Fisher & Ury, *supra* note 5, at 26-27.
- 207 See *id.*
- 208 See *Dee IV*, *supra* note 172 (noting that the murder of a prominent Catholic lawyer was avenged by a Loyalist group rather than the IRA, and that the Loyalist group absolved the IRA from any responsibility in the retaliation killing). This instance of Loyalist paramilitaries policing themselves permitted the IRA to remain inactive, thus avoiding the tit for tat violence that has characterized much of Northern Ireland’s political culture.
- 209 See *Taylor*, *supra* note 160.

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- 210 See Fisher & Ury, *supra* note 5, at 27-28. Indeed, GTY indicates that “[a]part from the substantive merits, the feeling of participation in the process is perhaps the single most important factor in determining whether a negotiator accepts a proposal...[and that], the process is the product.” *Id.* at 28.
- 211 See *id.* at 27.
- 212 See *id.* at 27-28.
- 213 See *id.*; Crisis Week for Process, *Irish Times*, Apr. 19, 1999, at 17 (visited Apr. 30, 2000) <<http://www.irish-times.com>>.
- 214 See Butler, *supra* note 111.
- 215 See Jim Cusack et al., Unionists Bitter at IRA's Refusal to Decommission Arms, *Irish Times*, Dec. 12, 1998, at 1 (visited Apr. 30, 2000) <<http://www.irish-times.com>> (reporting that the IRA released a statement concerning their refusal to decommission in response to David Trimble's Nobel Peace Prize acceptance speech in which he stated that the IRA would have to decommission “before Sinn Fein could be allowed into government in Northern Ireland”).
- 216 See *id.*; Fisher & Ury, *supra* note 5, at 32 (“[F]requently, each side has given up on the other and is no longer attempting any serious communications....Instead they talk merely to impress third parties or their own constituency.”).
- 217 See *id.* at 32; Spencer & Yang, *supra* note 1, at 1505 (“[P]eace talks seem to be most fruitful without the spotlight effect and constant posturing caused by the presence of mass media”).
- 218 See Fisher & Ury, *supra* note 5, at 34.
- 219 See Mary Holland, Sinn Fein Must Look at the Figures that Back a Political Way, *Irish Times*, Mar. 11, 1999, at 16 (visited Apr. 30, 2000) <<http://www.irish-times.com>> [hereinafter Holland II].
- 220 See Fisher & Ury, *supra* note 5, at 34-35.
- 221 See Holland II, *supra* note 219, at 16.
- 222 See Fisher & Ury, *supra* note 5, at 26, 32-37.
- 223 See Martin Fletcher, IRA May Hint at Glimmer of Light Over Arms Deadlock, *Times of London*, Mar. 29, 1999, available in 1999 WL 7983355.
- 224 See Fisher & Ury, *supra* note 5, at 40-55.
- 225 See *id.* at 44-50; Dunn & Nolan-Haley, *supra* note 18, at 1380.
- 226 See Dee II, *supra* note 135; Breen I, *supra* note 112, at 5.
- 227 See Ulster Peace Hits a Rock, *The Guardian* (London), Feb. 16, 1999 (stating that the Sinn Fein leadership risks defection and their own assassinations by agreeing to demands for decommissioning) [hereinafter Ulster Peace Hits a Rock].
- 228 See Holland II, *supra* note 219, at 16.
- 229 See Dee II, *supra* note 135.
- 230 See de Breadun VII, *supra* note 98, at 51.
- 231 See Ulster Peace Hits a Rock, *supra* note 227.
- 232 See Holland II, *supra* note 219, at 16.

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- 233 Conflicting interests are not causing the problem in Northern Ireland, rather, it is the way in which the parties have handled these conflicting interests. See Roger Fisher, [Coping with Conflict: What Kind of Theory Might Help](#), 67 *Notre Dame L. Rev.* 1335, 1335-37 (1992).
- 234 See de Breadun VII, *supra* note 98, at 51.
- 235 See Holland II, *supra* note 219, at 16; Jonathan R. Cohen, [Reasoning Along Different Lines: Some Varied Roles of Rationality in Negotiation and Conflict Resolution](#), 3 *Harv. Negotiation L. Rev.* 111, 118-19 (1998).
- 236 See Fletcher, *supra* note 223.
- 237 See Walsh, *supra* note 146, at 14.
- 238 See McAdam, *supra* note 166, at 1. However, the “jumping together” mechanism would itself have to satisfy the negotiators interests. See *id.*
- 239 See Clarke & Kearney, *supra* note 180; Greeley, *supra* note 168.
- 240 See Finnegan, *supra* note 151, at 14.
- 241 See *id.*
- 242 See *id.*
- 243 See *id.* To the extent that the negotiators can extract their interest in decommissioning from their previous positions regarding the timing issue, it appears that an agreement is possible. Both sides have drawn lines in the sand regarding the timing of decommissioning, and now both sides need face-saving ways of allowing each other to erase the lines in the sand. See Fisher & Ury, *supra* note 5, at 28. Trimble and the Unionists made progress in this regard when they allowed Sinn Fein into the Northern Ireland Executive, thus abandoning the line that they had drawn in the sand. See Fletcher, *supra* note 223. However, the line was only re-drawn a little further back. See Taylor, *supra* note 160. Therefore, the timing issue is still getting in the way of a final agreement.
- 244 See Fisher & Ury, *supra* note 5, at 52-53.
- 245 See *id.*
- 246 See O'Toole, *supra* note 138, at 14 (“[I]f it turns its gaze from the past to the future, the Republican movement will see it is in Sinn Fein's interest that the IRA should get rid of its weapons.”).
- 247 See Dunn & Nolan-Haley, *supra* note 18, at 1379 (quoting a letter from a former IRA member to the New York Times: “Finally, both sides should apologize for the horrors and crimes visited on each other and civilians... If we do not admit our sorrow and our wrongs, if we continue to pursue an eye for an eye, we will all wind up blind.”).
- 248 See Cullen I, *supra* note 43, at 14 (“Scores of Republicans and Loyalists [have] come out of prison no less committed to their opposing views of national identity but utterly convinced that continuing the conflict was a needless sacrifice of the next generation. Men who in a previous generation had talked about ‘the struggle’ now began talking about ‘the children,’ in many cases their own.”).
- 249 See Deaglan de Breadun, *IRA Threat of Violence to Bar SF*, *Irish Times*, Jan. 27, 1999, at 9 (visited Apr. 30, 2000) <<http://www.irish-times.com>> [[hereinafter de Breadun X]; Cullen I, *supra* note 43, at 14.
- 250 See *Ulster Peace Hits a Rock*, *supra* note 227.
- 251 See Fisher & Ury, *supra* note 5, at 58-59 (suggesting that searching for a single answer may unnecessarily limit the negotiation).
- 252 See Taylor, *supra* note 160.
- 253 See *id.*

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- 254 See *id.*
- 255 See Fisher & Ury, *supra* note 5, at 70-80; Taylor, *supra* note 160 (noting that Trimble, upon managing this change in strategy, stated that “We’ve done our bit, Mr. Adams, it’s over to you. We’ve jumped. You follow.”). Rather than Trimble’s resignation, the decommissioning showdown resulted in the suspension of self-government in Northern Ireland. See *id.*
- 256 See Fisher & Ury, *supra* note 5, at 87.
- 257 See Clarke & Kearney, *supra* note 180.
- 258 See Ulster Peace Hits a Rock, *supra* note 227. If a second mediation were conducted, employing the one-text procedure may help the negotiators arrive at a decommissioning timetable. See Fletcher, *supra* note 223 (outlining one-text procedure).
- 259 See Mitchell, *supra* note 175, at C7.
- 260 See Tynan, *supra* note 14, at 62. Suggesting external intervention in Northern Ireland is not unprecedented. See *id.* (stating that the Republic of Ireland considered requesting U.N. peacekeeping troops in 1969 when the Troubles first erupted).
- 261 See Cusack, *supra* note 215, at 1; Darwin Templeton, The New ‘D’ Word in the Quest for Peace, *Belfast Telegraph*, Dec. 7, 1999 (“[T]here is a growing acceptance in political circles that some form of synchronised scaling down of the security presence could hold the key to unlocking the decommissioning dispute.”).
- 262 See Justus R. Weiner, [The Temporary International Presence in the City of Hebron \(“TIPH”\): A Unique Approach to Peacekeeping](#), 16 *Wis. Int’l L. J.* 281, 286-90 (1997). Troops/peacekeepers from either the United States or the United Nations could be used to oversee the transition. See *id.* Although there would be many new issues raised by such an approach, it may be worth further exploration inasmuch as it offers potential solutions for the controversial policing and decommissioning issues. Neutral U.S. or U.N. troops would only be effective if both sides agreed. The trust and respect placed in the United States by both sides suggests that an American presence, or an American dominated international presence would be potentially viable.
- 263 See *id.*
- 264 See Goldberg., *supra* note 1, at 226. Med-Arb is a hybridized form of dispute resolution that involves a traditional mediation as a first step. See *id.* If the mediation fails, then the mediator assumes the role of an arbitrator. See *id.* This bifurcated process encourages negotiated agreements because the prospect of a binding determination encourages the parties to formulate their own solution, as well as moderating the effects of positional bargaining. Furthermore, this procedure is efficient inasmuch as the mediator becomes the arbitrator, thus reducing transaction costs that would be involved in conducting a traditional mediation followed by a separate arbitration. However, this procedure has the downside of reducing the parties’ frankness with the mediator, which in turn may decrease a mediator’s effectiveness in some mediations.
- 265 See Deaglan de Breadun, Pitfalls and Uncertainties Should Not be a Surprise, *Irish Times*, Dec. 1, 1999, at 5 (visited Apr. 30, 2000) < <http://www.irish-times.com> > [hereinafter de Breadun XI]; Now the Path is Clear for Devolution to Take Place, *Express on Sunday*, Nov. 28, 1999; Jim Dee, Arms Plan May Save Peace in N. Ireland, *Boston Herald*, Nov. 16, 1999, at 7 (“[T]he three-man [IICD] is comprised of former Canadian General John de Chastelain, former Finnish Gen. Tauno Nieminen and former U.S. State Department official Andrew Sens... [vowed to] play a more active role [in decommissioning].”) [[hereinafter DeeV]. See also Deaglan de Breadun, The Man in the Middle of Decommissioning, *Irish Times*, Feb. 13, 1999, at 10 (visited Apr. 30, 2000) < <http://www.irish-times.com> > [hereinafter de Breadun XII].
- 266 See Frank Millar, Arms Destruction Timetable Expected by December 10th, *Irish Times*, Dec. 1, 1999, at 4. But see Iain Watson, Unionists Give Peace a Chance, *Sunday Herald (London)*, Nov. 28, 1999, at 10 (“Unionists did not want to leave the timing of disarmament to the commission under General de Chastelain... [because] [t]hey wanted guarantees that the new policy of ‘government then guns’ would not give Sinn Fein a one-way ticket to political power.”).

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- 267 See Dee I, *supra* note 48, at 7; Clare Murphy, Irish Times, The Path to Peace: Trimble Urges UFF to Appoint a Go-between (visited Apr. 30, 2000) < <http://www.irish-times.com>> (noting that the UVF had appointed a representative to the IICD and that Unionists were using the UDA/UFF to follow suit).
- 268 See Murphy, *supra* note 267 (quoting Gerry Adams: “The entry into discussions with de Chastelain should at least take that issue out of the political process and put [it] where it belongs within the decommissioning commission ... It cannot be resolved anywhere else except within that commission”).
- 269 See Goldberg., *supra* note 1, at 226.
- 270 See *id.* at 225-26.
- 271 See *id.* at 227. The chief problem with using a Med-Arb type procedure in Northern Ireland would be the risk of non-compliance with a decision handed down to the parties by the IICD. See *id.* However, the party that agreed to such a procedure, and then failed to comply with the result would risk negative public opinion and the value of their word, the importance of which should not be underestimated. Reneging on such an agreement would risk being excluded from future processes. Furthermore, a reputation for veracity offers tangible returns in a complex transaction such as the peace process in Northern Ireland where the parties are repeat players.
- 272 However, a decision by the IICD may be exactly what the parties need. The GFA was made possible by the efforts of mediator, George Mitchell. See Clarke & Kearney, *supra* note 180. The parties reached an agreement that was considered impossible before Apr. 10, 1998. The decommissioning stalemate may, like the GFA, require resort to a third-party neutral because the parties could live with compromise, but not a compromise that makes them feel as though they had lost or otherwise capitulated to the other side. Therefore, a compromise proposed or imposed by a respected third-party neutral such as the IICD may be required to break the decommissioning impasse in Northern Ireland.
- 273 John F. Kennedy, Inaugural Address, Jan. 20, 1961.
- 274 See Fletcher, *supra* note 223.
- 275 See *id.*
- 276 See Clarke & Kearney, *supra* note 180.
- 277 See Fletcher, *supra* note 223.
- 278 See *id.*
- 279 A symbolic or token gesture of decommissioning could potentially satisfy the interests of both Republicans and Unionists, while allowing both to save-face in front of skeptical political factions and paramilitaries. However, token decommissioning appears to be equivalent to actual decommissioning inasmuch as weapons can always be replaced, thus making “full” decommissioning more symbolic than substantive.
- 280 See McAdam, *supra* note 166, at 1. Indeed, a “jump together” together scenario would have to be a product of joint Unionist and Republican efforts because the collaborative solution would give each side a stake in making the proposal work. Despite the monumental stake that each side has in the process itself, neither side is likely to advocate a proposal for overcoming decommissioning that was not a product of their own efforts. For example, Republicans did not have a hand, that we know of, in Trimble's maneuver that allowed Sinn Fein into the Executive. Consequently, despite the Unionist concession, the Republicans nonetheless demonstrated some reservations about Trimble's announcement. See Breen II, *supra* note 160, at 4.
- 281 See Deaglan de Breadun, Reinterpreting the D-word in Quest to Break Arms Deadlock, Irish Times, Dec. 1, 1998, at 16 (visited Apr. 30, 2000) < <http://www.irish-times.com>> [hereinafter de Breadun XIII]; de Breadun XI, *supra* note 265, at 5.
- 282 See Clarke & Kearney, *supra* note 180.

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- 283 A difficult compromise suggested by the IICD may allow both sides to save-face. Furthermore, the IICD's recommendation would provide an objective legitimacy that is lacked by the negotiator's proposals.
- 284 See Holland II, supra note 219, at 18.
- 285 See Cohen, supra note 235, at 118-19.

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