UK in a Changing Europe

'The Irish Border and Brexit: An Explainer, Parts I & II'

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January 2017

Part I:

The origins of the Irish border

Partition

The meandering Irish land border runs for just under 500 km across the northern part of the island of Ireland. It divides the independent state of the Republic of Ireland from the six counties of Northern Ireland, a region of the United Kingdom. At 1.81m, the population of Northern Ireland constitutes 28% of the population on the island but just 3% of the United Kingdom. It was the Government of Ireland Act (1920) that first divided the island into two separate jurisdictions, each with its own government and parliament. This act of partition was envisaged as an internal United Kingdom matter and as a temporary answer to the thorny question of contested sovereignty across the island. It was a solution that made sense in light of two overarching principles of contemporary democracy: nation-statehood and majoritarianism. The border was intended to carve off the largest portion of territory of the island over which Unionism could remain in control, via a majority Protestant population. The island's complex history as a site of contests for power and control – some of which battles had wide European resonances – was thus dramatically over-simplified and reduced into the division of the Irish border.

In 1922, after a year of civil war in the south, the unionist-dominated government of Northern Ireland exercised its right not to be included in the Irish Free State, and the border officially became an international frontier. Over time, it steadily took a more concrete form as a customs barrier and security frontier as well as a political and symbolic divide. By 1949, when the Free State was reconstituted as the Republic of Ireland and left the British

Commonwealth, differences between the two jurisdictions had been deeply exacerbated. Relations between the two parts of Ireland in the twentieth century were characterized by 'back to back' development, with each legislature acting in almost wilful ignorance of the effects of its policies and laws on the other. The symbolic significance of the border for both unionism and nationalism alike was not translated into any sustained effort to ameliorate its negative effects, even in the borderland region itself.

The colonial high-handedness with which the border was carved is reflected in its route, which cuts through single farm holdings and shows little respect for the natural terrain of the landscape. For the largely rural and impoverished borderlands, there were particularly dire consequences from severing the close social, economic and kinship ties that ran across what had previously been merely a county boundary. Still today, the districts on both immediate sides of the Irish border are characterized by socio-economic deficits and their peripheral position for policymaking in London, Belfast and Dublin.

The hardening of the border

The creation of the Common Travel Area in 1923 (including all of the island of Ireland and Great Britain, plus the Channel Islands and Isle of Man) was a response to the difficulty of managing a newly-imposed land border on territory formally under the rule of the British state. It allowed for citizens to travel freely across and between these islands with no passport requirement. The most formal acknowledgement of the Common Travel Area came with the UK's Ireland Act of 1949, which stated that Ireland was 'not a foreign country' for legal purposes. In legal terms, therefore, travel was relatively unhindered and residents' rights presumed a high degree of commonality and reciprocity between the two islands and British and Irish citizenship.

On the island itself, border enforcement policies ran the gamut from 'soft' to 'hard' to 'extreme'. Early on, the border checkpoints were only for customs and initially for a limited range of goods, including some manufactured goods. Whilst inconvenient for residents and disruptive to many local retailers, the sharp edge of the customs border did not become fully apparent until a decade later, when duties on agricultural produce began to be required, in response to the economic war between the British and Irish governments. This

trade war – which quickly escalated to include steel and coal – demonstrated the willingness of both governments to enact policies with highly damaging consequences for cross-border relations and economic fortunes. The problem of smuggling and black marketeering around the border was worsened by the outbreak of the Second World War. Ireland's neutrality meant that the effects of the war were much more acutely felt on the northern side of the border. Northern Ireland's peripheral position at this time was further exacerbated by the temporary suspension of the Common Travel Area and the reimposition (until 1952) of passport checks between the island (including Northern Ireland) and Great Britain.

In the late 1950s, the symbolism of the border as a legacy of British imperialism was raised with the 'border campaign' of the paramilitary Irish Republican Army, which included high profile attacks on military and police targets in Northern Ireland. However, it wasn't until the outbreak of the Troubles a decade later that the manifestation of the border as a securitized barrier became apparent. The most severe forms of border management included the outright destruction of cross-border civil infrastructure by UK military forces in response to a perceived terrorist threat from the south. The dismantling of the last British military watchtowers along the border in 2006 marked a significant step forward for the peace process and good relations on the island more broadly. Nowadays, the clearest material indication of having crossed the border from one state into another lies merely in the subtle change of road markings, signs and speed limits.

The peace process and the border

The 1998 Good Friday (Belfast) Agreement, on which Northern Ireland's peace process rests, approaches the Irish border not merely as a dividing line between the jurisdiction of the Republic of Ireland and the United Kingdom but as the embodiment of historical difference between British and Irish nationalisms. It assumes that the primary political, social and cultural identities within Northern Ireland centre on conflicting interpretations of the border's legitimacy and, what is more, that they have conveniently settled into a stable binary divide: British/Protestant/unionist and Irish/Catholic/nationalist. The strongest manifestation of this is a commitment by both governments to facilitate Irish reunification if it is the will of a majority in both jurisdictions, expressed via a referendum. As the Deputy First Minister of Northern Ireland and the Irish Taoiseach have reminded British and EU

leaders, the potential for a 'border poll' in both jurisdictions on the island is embedded in international law. This means that the position of Northern Ireland is peculiar in the UK context, given that international law recognizes the possibility that the constitutional status of Northern Ireland may change in the foreseeable future, to such a degree that it may move to being within the jurisdiction of a foreign state and, in so doing, become reincorporated within the EU.

As it is – the majority in Northern Ireland still being content with the status quo of devolution within the UK, despite the resilience of strong Irish and nationalist identities – the power-sharing arrangements put in place by the Agreement are premised on a clear split between nationalism and unionism. This is acceptable to both unionists and nationalists because the Agreement (rather like the EU) is multilevel. It includes institutions that accommodate different ideological lodestars regarding the status of Northern Ireland. In the all-island Strand (Strand 2) of the Agreement, six all-island Implementation Bodies are charged with ensuring a cross-border approach to matters of shared interest (such as EU programmes, trade and inland waterways). Added to this, a North South Ministerial Council (NSMC), with sectoral meetings for ministers in both jurisdictions and a standing Secretariat, has been established. It is significant that the North South Ministerial Council is charged with ensuring the representation of all-island interests at the EU level, including through the presence of NSMC members on Irish delegations to the Council of Ministers. For the third Strand of the Agreement, covering east-west relations, the British-Irish Council and British-Irish Intergovernmental Conference enable representation of Northern Ireland's interests in collaboration with those of other regions across these islands.

The effects of EU membership

The accession of Ireland and the UK to the then-EEC in 1973 played a pivotal role in developing British-Irish relations towards a shared acceptance of a consensual approach to matters of common concern. By 1985, the Anglo-Irish Agreement noted the "determination of both governments to develop close cooperation as partners in the European Community". The practice and the model of intergovernmental relations in the EU has effectively strengthened British-Irish relations to the benefit of peace in Northern Ireland. It is important to remember that the status of Ireland as an – in principle – equal partner with

the UK in the European Union has been crucial in securing the legitimacy and respect for an input from the Irish state into the peace process. Nowadays it is entirely normal and expected that Irish ministers and officials will play a major role in negotiations and talks on the peace and future of Northern Ireland.[i]

Related to this, perhaps the most crucial influence the EU has had on the resolution of the conflict in Northern Ireland has been 'constructive' but indirect, affecting the structures, context and language of conflict resolution amongst regional level actors. This reflects the nature of the EU as a diverse organisation whose substantial effects are determined at the level of the recipient. It also reflects the nature of the conflict in Northern Ireland itself, which required a peace process that works at various levels in order to achieve common interests through political cooperation. Ultimately, it appears that it is not so much the actors or structures of the European Union but the actual *process* of European integration itself that has served to facilitate cooperation across ideological, political and territorial borders.

In a very practical way, the EU has been successful in forging change in cross-border economic relationships in Ireland through its structural impact on the significance of the border as an economic and customs divide. For example, the introduction of EEC regulations on customs declarations in 1987 had immediate effect on the ease with which goods could be transported between north and south. Furthermore, the creation of the Single Market on 1 January 1993 erased many obstacles to cross-border trade and economic development, and customs posts on the border were immediately made redundant. Added to this, the EU helped create, support and fund networks and programmes across and through the border region, helping to ameliorate some of the negative legacy of the border whilst facilitating closer integration of economies on either side.

Part II:

Key challenges around the border after Brexit

Economic

One of the most complex challenges for Northern Ireland would arise if the UK leaves the single market and customs union. In addition to the non-tariff barriers to service trade and the costs of limiting free movement of labour, this would mean a reimposition of duties on goods going to and from the UK to the Republic and further afield. In addition to the negative effects that this would have upon the trading relationship with the south (particularly acute for the agri-food industry around the border region), the practicalities of ensuring customs duties are paid – and checks on goods being transported – would add extra time and administrative burdens to cross-border trade. The fact that the Crown Dependencies are outside the EU and Customs Union does offer an interesting parallel; it is notable, however, that as islands, their goods are already transported through specific ports, which creates the opportunity for checks and border management at these entry/exit points. The creation of such opportunities at a land border inevitably adds disruption and delay to a journey, as well as adding to the effects of the border in terms of its visibility and restrictions (e.g. the reintroduction of 'approved' roads for the transport of goods).

In passing through an external EU border the approximately 35% of Northern Irish exports (55% of manufactured exports) currently destined for southern markets would be exposed to a significant competitive disadvantage relative to [EU-produced goods](#). More generally, the price distortions created by a northern exit of the single European market present both a financial and security challenge to policy-makers on both sides of the border. Financially, returning to a disintegrated market would entail increased costs and risks for both jurisdictions – in particular as it would revive the same incentive for black market trade that fuelled smuggling operations across the border prior to EEC accession. Together this would undermine the consumption tax and import revenues collected by both states. Northern Ireland's structural financial vulnerability and public-sector reliance on the British exchequer means that there is little the devolved legislature can do to allow it to escape this painful reality. In essence, a 'hard' Brexit (including exit from the customs union) threatens

economic sustainability of the borderland region, risks market disintegration in Ireland, and presents a heavy barrier to further socio-economic development across the border.

Peace Process

A Northern Ireland exit from the single European market also has direct security implications for the borderlands region specifically, and for the peace process more broadly. Symbolically, the re-appearance of a border would itself be highly destabilizing, undermining nationalist support for the settlement and weakening Sinn Féin's political position north and south. It would also have practical implications. First, policing the border – in whatever form that might take – will necessarily mean the inadvertent creation of 'targets' for republican attacks. There would also be insidious indirect effects on the growth of a security threat. While the bulk of the paramilitary groups engaged in the atrocities of the Troubles have since been demobilized and reduced to sporadic outbursts of violence, the most extreme elements of both sides continue to rely on black market smuggling operations to finance their activities. It is conceivable that an increase in demand and profitability of black market smuggling would provide a powerful economic incentive for paramilitary groups already engaged in these types of operations. The drawdown of PEACE funding, such as that aimed at assisting and reconciling highly vulnerable groups such former combatants and at-risk young people, though not tied directly to the Brexit process, will likely compound this challenge as no replacement funding has emerged to fill this service gap.

In light of the unique post-conflict situation of Northern Ireland, there has been a legal case made regarding the implications of Brexit for the terms of the 1998 Agreement. Readjusting or revising the Agreement (and the attendant NI Act of 1998) in order to purge references to EU law and policy (specifically for North-South relations on the island), while not a legal problem in itself, could potentially unravel what is arguably an ambiguous and tactical toleration between political protagonists. The EU is quite so important for the Agreement because it created the context within which such cross-border cooperation was normalized and depoliticized. The fact that nationalists felt themselves equal and protected as Irish citizens in Northern Ireland was in no small part connected to the broader framework of common EU citizenship. Other risks to the peace process from the border-related aspects of

Brexit arise from the potential politicization of widening division within the two broad political communities in Northern Ireland: [(pro-Leave) unionists and (pro-Remain) nationalists.](#)

Political

This leads into the broader political implications of Brexit. Within the context of European integration, cross-border cooperation – everything from Irish government funding for dual carriageways in Northern Ireland through to the common use of specialized health and education services – was broadly depoliticized and rationalized. Outside of this context, such cooperation is not only more difficult in practical terms, it becomes symbolically and politically more sensitive. Indeed, because cross-border cooperation will then require political will and action at several levels on both sides of the border, it can both be (a) less likely to happen and (b) subject to misinterpretation or over-egging by political opponents and political friends. This carries particular risks in a divided society such as Northern Ireland, where political capital still rests on emphasizing adherence to a particular standpoint on the Irish border. For the last decade or so, drawing attention to the border – and making it subject to politicking in this way – is something that generally only critics of the peace process have been keen to do.

Social

Sometimes the intangible effects of a policy or process are the most important. Perhaps the most successful dimension of Irish cross-border integration over the past forty years of membership is its normalization; this is precisely the dimension most directly threatened by an exit from the EU. First, the border that partitions the island into the Republic of Ireland and the UK's Northern Ireland will take on a new practical and policy significance as an external boundary of the EU; likewise, it becomes the UK's only land border with the EU (not withstanding the entry point of the port tunnel). Although the transformation from internal to external EU border is unlikely to result in the disintegration of the Common Travel Area, it would place pressure on these arrangements. Given that the requirement for checks on travellers into the EU would have to take place as people enter Ireland, *this would need to include the land border* if it has not already happened at entry points into Northern Ireland (which is an arrangement which would entail differentiation of controls *within* the UK).

A bespoke arrangement?

The pressure for a 'special status' or bespoke arrangement for Northern Ireland rests on: (a) concerns about the cost and practical difficulties of managing the Irish border as an external EU border, (b) recognition of the present level of cross-border integration on the island, and (c) the unique position of Northern Ireland as a region whose peace and power-sharing institutions centre on close and constructive cross-border relationships. A bespoke arrangement would, in its simplest terms, be seen to address the headline problems caused by the exit from the EU, i.e. it could meet the requirement of maintaining freedom of movement of goods, services, people and capital on the island, as well as enabling sustained funding (including EU) for certain cross-border projects and even sectors. However, such an arrangement would have immediate implications for other dynamics of Northern Ireland's position. The EU, Ireland and the UK would require the *manifestation* of the state border with, at a minimum, checks for immigration controls and customs duties. Two immediate questions arise from this: how and where would this take place? Electronic passes can only facilitate freedom of movement so far – security requirements mean that physical checks will have to be used to reinforce compliance with the law. The most apparent implication is that if these checks cannot take place *within* the island of Ireland (i.e. at the border), such checks will have to take place *between* these islands. This poses further ideological and political problems for unionists – in whose interests the border was originally drawn. Putting border controls between Britain and Northern Ireland would be a sign of division in the United Kingdom and thus anathema to unionists; however, asking the Republic of Ireland to enact UK border controls would be reminiscent of using Ireland as a colonial outpost and unpalatable to nationalists. Other ways of enacting border controls without carrying out physical border checks – such as enforcing immigration checks at 'point of contact', when people seek to access employment or public services – would also be ethically difficult to sell, as well as difficult to enact in practical and political terms.

Conclusion

It is important to remember that much of Ireland's post-conflict governance success was historically contingent upon strong British-Irish bilateralism outside the control of Brussels, and that the result of the UK referendum in no way diminishes the capacity for strong,

peaceful, and mutually beneficial relations to continue across the Irish border. With that said, in a time of increasingly nationalistic and isolationist fervour in Britain's English core, the threat posed to continued Irish integration should be noted by politicians across the island of Ireland. Centralisation of decision making in London is the default position in the absence of clarity about the repatriation of powers to devolved region through the 'Great Repeal Act'. This would be a movement in the opposite direction to that which reassured Irish nationalists enough to support Northern Ireland's confirmed status as a devolved region of the UK. Although it does not pose an existential threat to the region's post-conflict settlement, Brexit could have serious consequences for the stability and security (including economic security) of the population of Northern Ireland.

The recent history of the Irish border tells us three things. First, ideology (particularly if seen to be promoting national pride and sovereignty) can trump economic interests (as during the Anglo-Irish trade war of the 1930s). Second, border checks can be flexibly imposed – at times manifest on the Irish land border, at other times (and for other purposes) manifest on the sea border between the islands (or at entry points from one to the other). Thirdly, it is possible to have different 'types' of border at the same time, e.g. hard for security and soft for customs checks (as in post-1993, when joint entry into the single market did not negate the use of army checkpoints at the border). There are thus various means of accommodating the requirements of an EU external border with the needs for close cross-border cooperation. However, all these will require more formalization, more visibility and more regulation than currently exist at the moment. At its simplest, it may be expected that those who want to traverse the border with ease will have to register (and presumably pay) to do so.

The history of the EU's effects on the border also tell us key things. If national political decisions can shape the experience and effects of EU membership, presumably they can mould the effects of EU exit too. It also tells us that local and border region actors can be flexible and adaptive in response to the changing manifestation of a border. This can take the form of economic opportunism (as currently exists in making the most of the difference in currency and tax regimes between the two jurisdictions) and administrative ingenuity (as seen in the agreements formed between local authorities on both sides of the border for

the delivery of better public service for residents of the border region). There is every reason to believe that such innovation, accommodation and determination will continue into any post-Brexit scenario.

That said, all such activity will be in response to the new delineation of the UK's borders with the European Union. The precise nature and purpose of those borders (including the Irish border) will, of course, be determined by the outcome of negotiations that look set to take place with no direct input from Northern Ireland or the Irish border region.

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[i] For example, the prominence given to Irish Minister for Foreign Affairs, Charlie Flanagan, in the most recent 'A Fresh Start' Agreement (around budget reform and legacy of the past issues) in November 2015, is a clear demonstration of this. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf