

ANSWERING ANOTHER ‘IRISH QUESTION’: BREXIT AND THE IRISH BORDER

Gladstone .. spent his declining years trying to guess the answer to the Irish Question; unfortunately, whenever he was getting warm, the Irish secretly changed the Question

W.C. Sellar and R. J. Yeatman *1066 and All That: A Memorable History of England* (1930)

PART ONE: IRELAND’S SLOW ROAD TO PEACE

And I shall have some peace there, for peace comes dropping slow William Butler Yeats (1888)

CONTEXT: THE BORDER AND BREXIT

The outcome of the 2016 British referendum on EU membership will have significant and lasting consequences. For the United Kingdom and its relations with European neighbours, for the constitutional fabric of the British State and for the EU at a time of uncertainty over the future of the European project. The consequences of this decision will have no greater impact however than on the still-fragile peace process known as the ‘Good Friday’ or Belfast Agreement, negotiated in 1998 by parties representing Northern Ireland’s principal cultural communities and the governments of the United Kingdom and the Republic of Ireland. This historic event brought to an end decades of political violence and centuries of sectarian bitterness, or so it was thought at the time. Brexit has thrown into doubt the future of that peace process.

The EU was an important guarantor of that historic reconciliation, and an exemplar too of peaceful coexistence and ‘ever-closer’ integration within a framework of multi-level governance. The European project pursued a functional approach to rebuilding trust between former enemies, by pooling or sharing key elements of national sovereignty, most especially in economic and functional matters. A *méthode communautaire* as the paradigm for what might be achieved by setting aside ancient quarrels, co-operating to recover political trust and improve economic prosperity in a Continent ravaged by war and chaos. A model for repairing fractured politics, as it has proved to be in Ireland. The European Union was essential agency for inter-communal reconciliation in Ireland and it has continued to play its part, both in facilitating and funding projects that have contributed to consolidating the peace process. Projects that have restored public confidence in ‘normal’ politics, reinstating trust in government, and in the process lessening the appeal of violence as the first reflex of politics. Amongst these important achievements was the shift in the very meaning and symbolism of the 1921 border, from outright barrier to conduit between Northern Ireland and the Republic.

The British Government's decision to heed the narrow decision in the 2016 referendum and withdraw from the EU, leave the customs union and the Single Market, has thrown into doubt this return to normalcy. The decision to recover what Brexit voters are persuaded is their sovereign right to 'take back control' of trade policy from Brussels, and with that to end free movement of people and to withdraw from the jurisdiction of the European Court of Justice, will have serious consequences both for the operational management and politics of the UK-EU border. Nowhere more so than in Ireland, where what over-time has become an invisible and mostly insignificant border will recover some of the paraphernalia and connotations of an international border. And with that renewed uncertainty about co-operation between communities on the ground and political authorities in the region, potentially even reversing the peace process.

Nothing is certain in politics whose most consistent law is that of (mostly) unanticipated consequences. The objective of this short series of position papers is to review the likely consequences of this mostly unexpected threat to peace in this famously turbulent region. To reflect on inimical consequences that might ensue from the border issue and how these might be averted by reviewing various proposals for border management, and especially those proposed by the British Government whose decision to invoke Article 50 of the Lisbon Treaty and serve notice of withdrawal from the EU has brought renewed anxiety to this region. Indeed, what is at stake here is nothing less dramatic than the prospect of turning back the clock, with the peace process as Brexit's most calamitous casualty.

ORIGINS OF AN ANCIENT QUARREL

What the nineteenth century British prime minister, William Gladstone famously described as 'the Irish Question' has been a persistent theme in British politics throughout the past two centuries, although the principal logics of 'the question' have shifted in response to changing political circumstances. Anglo-Irish relations have many dimensions, cultural, political, strategic and economic, yet the essence of what are mostly problematic relations is politics: the island of Ireland's constitutional status and political relations with its more powerful British neighbour. Home Rule finally granted to the 26 southern counties in the 1921 Anglo-Irish Treaty represented an historic shift in relations, consigning the 'ancient quarrel' between the former imperial power and what Irish nationalists regarded as 'occupied' territory to history, at least for the two principals. The successor Irish Free State's relations with the former British imperium were always problematic, a mostly one-sided bargain: accorded semi-independent status under the terms of the 1921 Treaty, but at London's insistence remaining as a Dominion of the British Empire. With the ratification of the 1937 Constitution, Ireland's Parliament (*Oireachtas*) confirmed the Free State's unilateral repudiation of the 1931 Statute of Westminster that had defined relations between the British Crown and Commonwealth Dominions, assuming the status of a Republic outside the British Empire. A status finally confirmed by the Republic of Ireland Act (1948) and to all intents an ancient quarrel finally resolved, or so it seemed.

British assumptions about finality underestimated the corrosive impact of festering resentments amongst the minority community in Northern Ireland. A sense of grievance amongst Ulster's Catholics that the right to sovereign independence conferred on the Free State was denied to them. Nationalists on both sides of the 1921 border repudiated partition as much less the outcome of equitable negotiation than *fait accompli*. A conditional Home Rule imposed on the 26 southern counties, with a Northern Province carved out of the island, where power resided with a unionist majority retaining allegiance to the Crown. The 1937 Irish Constitution did not recognise the legality of the border, Article 2 proclaiming 'legal right' to the six northern counties, affirming that: "The national territory consists of the whole island of Ireland, its islands and the territorial seas". The fact that the boundary between these quite separate international jurisdictions was seen by Republicans as an imposed frontier, with Irish citizens marooned on one side of it, ensured that the optimistic expectation the 'Irish Question' was finally answered turned out to be merely wishful thinking.

HISTORIC LEGACIES, LINGERING RESENTMENT

Residual resentment characterized Irish politics on both sides of the border for decades to come: a cultural-religious fault-line within Northern Ireland, and one that demarcated party politics in the new Irish state. This legacy of resentment faded over time in the Republic, or rather became discounted by generational change, overtaken by the onset of modernity that in time gave rise to altogether new social priorities that altered the dynamics of Irish politics. The *de facto* 1921 border however politically inconvenient to nationalists could not be ignored and its existence was acknowledged *de jure* in the 1937 Constitution, whose Article 3 affirmed the objective of "reintegration of the national territory". The legal status of the border notwithstanding, its cultural significance continued to frame relations on the island and fractured civil society in the Northern Province. At the same time, Anglo-Irish relations on both the political / legal and socio-cultural levels have remained ambiguous. This much was apparent from the start, constitutional formality complemented by legal and political agreements between London and Dublin that confirmed close albeit nuanced relations. A case in point here is the Common Travel Area that has existed in some degree or other since Ireland regained its independence. An area of open borders that comprises the United Kingdom of Great Britain and Northern Ireland, the Republic of Ireland, and the other British islands, the Isle of Man and the Channel Islands.

Meanwhile, resentment in the minority nationalist community over partition *per se* and what was seen as denial of civil rights acquired political momentum a consequence of historical memory but fortified by blatant abuse of public power by the unionist majority. Discrimination was customary practice throughout the public domain, in everything from access to public goods to sharing political power: in social housing, public sector employment and justice, the magistracy and police service recruited predominantly from,

managed on behalf of the majority community.¹ The Province was governed mainly in the interests of the unionist majority whose representatives in the regional parliament at Stormont and in the tertiary authorities controlled the levers of public power and disbursed the ‘spoils’ of office largely on a sectarian basis. Even the constitutional fabric was debased with constituency boundaries drawn or ‘gerrymandered’ in order to minimize the return of nationalists to local government and parliamentary seats. A polity whose constitutional status as a constituent of the ‘union state’ of the United Kingdom of Great Britain and Northern Ireland state was underpinned by cultural ascendancy and whose practice and consequences were condoned by successive British governments. A situation that also confirmed an abiding sense of alienation in the minority nationalist community, that saw itself as forcibly separated from compatriots in the Republic, abandoned if reluctantly by the Dublin politicians and victimized in their everyday affairs and life chances..

What for centuries had been classic imperial relations between neighbouring British islands, translated after 1921 into a quarrel defined by ethno-cultural domination in the newly created Province of Northern Ireland. A Protestant and unionist majority wielding public power almost exclusively and in their own communal interest, ruling over a Catholic nationalist minority mostly excluded from political influence.² Rather than answering the longstanding ‘Irish Question’, partition merely translated it as fierce ethno-cultural rivalry within the new micro-polity, reinforcing a culturally defined fault line and cultural separatism, within Northern Ireland as much as between the two political jurisdictions on the island of Ireland. On one side, unionists ‘loyal’ to the British State, and on the other nationalists and Republicans who saw themselves as victims of rank discrimination, now marooned in an alien polity, indeed in a foreign country.³

Resentment amongst the minority community gave rise to an embittered politics, and not only on the nationalist side of this religio-cultural divide.⁴ Protestants too were mistrustful, and not only of nationalist opponents. Their political leaders remained alert to possible betrayal by Westminster parties, and the more so as these parties over time disengaged emotionally and politically from the loyalist cause, seemingly indifferent to and prospectively prepared as unionists saw it to ‘betray’ their claims to be exclusively British. Consequently, unionists have felt themselves to be hostage to potential ‘treachery’ by any future British Government receptive to fashionable ideas about Irish reunification. Whether in response to changing ideas about ‘Britishness’ and the British State, or encouraged by ‘integrationists’ in Brussels after both countries had joined the European Community. The outcome in both Northern communities was embittered politics, visceral resentment and for some cultural antagonism

¹ Niall Ó Dochartaigh, Northern Ireland since 1920, in Richard Bourke and Ian McBride (eds), *The Princeton History of Modern Ireland*. (Princeton University Press, 2016), pp. 141-67.

² Cillian McGrattan, *Northern Ireland 1968-2008: The Politics of Entrenchment* (Macmillan Palgrave, Basingstoke 2010).

³ Ian McBride, Introduction: Memory and National Identity in Modern Ireland, in Ian McBride (ed), *History and Memory in Modern Ireland* (Cambridge University Press, 2001), pp.1-42.

⁴ Peter Burke, *What Is Cultural History?* (Polity Press, 2nd edition Cambridge, 2010)

that translated as outright hatred. A malignant politics expressed as unremitting sectarianism and intermittently as political mayhem and even violence by militants on both sides.⁵

FROM 'THE TROUBLES' TO THE PEACE PROCESS

Resentment is no reliable foundation for stable politics or constructive engagement, and so it has proved in Northern Ireland. Frustration over civil rights abuse and lack of equal opportunities amongst the minority community eventually gave rise to a civil rights movement committed at the outset to peaceful pursuit of equal rights. Marches and public demonstrations that incited outrage from loyalists and as the political situation deteriorated gave rise to paramilitary organizations on both sides intent on escalating violence. The British army was deployed to keep the peace and in March 1972, London suspended the regional parliament and imposed direct rule.⁶ What followed was three decades of mayhem known locally as 'The Troubles', spilling over the border with the Republic and occasionally across to the mainland with terrorist atrocities perpetrated by factions of the IRA, prompting in turn countervailing violence from hardline loyalist militias.⁷ The presence of the British army merely increased insurgency, with bombs and bullets rather than the ballot box as the principal medium of politics.⁸

After thirty years of disorder, tentative moves for peaceful resolution by the principal territorial governments with encouragement from Washington and Brussels brought ceasefire followed by negotiations. The outcome was the historic peace process that established power-sharing institutions, and just as important acceptance all-round of the principle of 'parity of esteem' between the majority unionist and minority nationalist communities. The paramilitaries agreed to decommission their arms caches and abandon armed struggle for normal politics, and although by no means entirely reconciling their abiding political differences, committed to a peace process based on power sharing.⁹ An Irish solution, yet one that would not have been realized without active involvement from external actors.

The principals in these negotiations were not only the representatives of the embattled communities, nor even governments in London and Dublin. No less significant as external guarantors and facilitators of the peace process on the ground were American President, Bill Clinton and the European Union. Common experience of EU Membership by the two states

⁵ Brian Barton, Northern Ireland, 1920-25, in J. R. Hill (ed), *Ireland, 1921-84*. Vol. 7 of *A New History of Ireland*, edited by F. J. Byrne, W. E. Vaughan, Art Cosgrove, J. R. Hill and Dáibhí Ó Cróinín, (Oxford University Press, 2003), at pp.161-198.

⁶ David McKittrick and David McVea, *Making Sense of the Troubles: A History of the Northern Ireland Conflict* (3rd edition Viking Press, London, 2012).

⁷ Brendan O'Leary, *The Politics of Antagonism: Understanding Northern Ireland* (2nd edition, Athlone Press, 1996)

⁸ Bernadette C. Hayes and Ian McAllister, *Conflict to peace: Politics and society in Northern Ireland over half a century* (Manchester University Press, 2013).

⁹ Cecelia Clegg, Embracing a Threatening Other: Identity and Reconciliation in Northern Ireland, in Sebastian C. H. Kim, Pauline Kollontai and Greg Hoyland (eds), *Peace and Reconciliation: In Search of Shared Identity*. (Ashgate, Abingdon 2008), pp.81-93.

and no less important local government and other agencies on both sides was instrumental, both for making political connections and for ensuring collaboration between the respective communities on the ground that replaced outright hostility with grudging acceptance of a shared interest in peace. After British and Irish accession to the EEC in 1973 goods, services and people transited the border in both directions and in increasing volume, with cross-border collaboration on a range of social, economic and infrastructural projects.¹⁰ Activity at every level and much of it financed by generous EC / EU structural funds was a major incentive to embedding the peace process where it most mattered, on the ground in long-separated communities and as such facilitating unprecedented co-operation between the cultural tribes and both Irelands.¹¹

The post-1921 border had been a cultural impediment as much as a political barrier and international frontier demarcating distinct political and legal entities. A manned and militarized symbol of an ancient quarrel, demarcated by barbed wire, armed watch towers, and documentary checks regardless of the right to free movement and transit, and continuing to be so even after mutual EC accession in 1973.¹² The launch of the Single Market in 1993 ensured altogether closer collaboration and further reduced the significance – indeed the relevance - of the border, although without eliminating it altogether. The peace process was nevertheless a signal moment, finally converting a ‘hard’ border into a merely vestigial, almost invisible boundary: much less a barrier than a bridge and a conduit for exponentially increasing cross-border co-operation within the broader compass of European integration.

The Belfast Agreement marks the historic step change towards peace and even reconciliation, although by no means ending this ancient quarrel. Over time, the formal geographic border became both invisible and redundant, until the EU referendum vote in June 2016. Brexit has cast a long shadow over this ‘slow dropping peace’, as it has over future EU / United Kingdom relations, after 1973 seemingly on the mend after decades in the doldrums. None of the collateral damage caused by Brexit has greater significance for regional relations than renewed uncertainty about the future meaning and status of the Irish border, reviving anxieties and jeopardizing what is a still fragile peace in this factious region.

The mostly unforeseen consequences of the ‘Brexit’ referendum have challenged some supposedly settled assumptions about British politics: London’s relations with erstwhile EU partners certainly, but even more serious the survival of the peace process itself. Brexit has brought to the fore the prospect of a border no longer politically settled or physically innocuous. This in turn raises serious challenges to settled politics and on several levels: to the United Kingdom’s continuing commitment to the peace process; provocation to the

¹⁰ E. Meehan, Britain’s Irish Question: Britain’s European Question?: British-Irish relations in the context of the European Union and the Belfast Agreement’, *Review of International Studies*, 26 (1) 2000, pp. 83-97.

¹¹ John Doyle, Governance and Citizenship in contested states: the Northern Ireland peace agreement as internationalised governance, *Irish Studies in International Affairs*, 10 1999, pp.201-219, available online at <https://core.ac.uk/download/pdf/11308392.pdf>.

¹² Brian Barton, Northern Ireland, 1920-25, in J. R. Hill (ed), *Ireland, 1921-84*. Vol. 7 of *A New History of Ireland*, edited by F. J. Byrne, W. E. Vaughan, Art Cosgrove, J. R. Hill and Dáibhí Ó Cróinín, (Oxford University Press, 2003), at pp.161-198.

special status and propinquity of Anglo-Irish relations; and no less critical, challenge to the United Kingdom's relations with soon to be former EU partners. More ominously, Brexit threatens fragile communal relations in Northern Ireland, portending a breakdown in trust and peaceful co-operation that has been the signal achievement of the peace process since 1998.

CROSS-BORDER RELATIONS BEFORE THE BELFAST ACCORD

In the decades up to the Belfast Agreement Ireland was beset with economic fragmentation as between north and south.¹³ Before the launch of the Single Market, delays at designated crossing points for customs and security checks and rudimentary transport links all contributed to lagging co-operation and deficient communications.¹⁴ Official statistics confirm the absence of integration, even between neighbouring jurisdictions that each belonged to the Common Market. At the time of the SEM's launch cross-border trade of some IR£1.127 million per annum was no more than modest, both 'Irelands' trading more intensively with the United Kingdom than with one another. Thereafter an emergent transnational political economy had a positive impact on economic and functional integration, boosting business and trade and with favourable political consequences, not least in the border region.¹⁵

Accelerating European integration was instrumental in improving relations and at every level, economic, social and political.¹⁶ The INTERREG programme, loans from the European Investment Bank (EIB) and subsequently a series of EU framework programmes including the current Horizon 2020 improved joint management strategies and exponential infrastructural co-operation between state enterprises, agencies and local government on both sides of the border.¹⁷ As did changes in the European Commission's criteria for awarding regional funding, with the border region designated as a single zone. The award of Objective One status and a key tool of the EU Cohesion Policy launched in 1998 (replaced in 2007 by the Convergence objective), was positive inducement to political authorities, public agencies and business stakeholders alike to respond to Brussels' insistent call for and encouragement of institutional partnerships across what became an increasingly informal border. Not all has been plain sailing. Differences in administrative cultures between co-operating authorities both North and South has made for difficulties in the implementation and management of these 'common' programmes. The respective governments and no less so the European Commission have worked hard nevertheless to increase intergovernmental co-operation

¹³ J. Bradley, 'The Two Economies of Ireland: An Analysis', in M. D'Arcy and T. Dickson (eds), *Border Crossings: Developing Ireland's Island Economy*, (Gill and MacMillan, Dublin 1995), p.40.

¹⁴ G. MacEnroe and W. Poole, 'Manufacturing: Two Plus Two Makes More than Four', in D'Arcy and Dickson (eds), *ibid.*, (1995), p. 120.

¹⁵ E. Tannam, 'Cross-Border Co-operation between Northern Ireland and the Republic of Ireland: Neo-Functionalism Revisited', *British Journal of Politics and International Relations*, 6 (2), 2006, pp.256–276.

¹⁶ Brennan, (1995), p. 75.

¹⁷ M. Adshead and J. Tongue, *Politics in Ireland: Convergence and Divergence on a Two Polity Island* (Palgrave Macmillan, Houndmills 2009) pp.220-22

essential for embedding the ‘peace process’ that eventually brought about an end to corrosive conflict by warring paramilitaries.¹⁸

THE POST-1998 BORDER: FROM BARRIER TO CONDUIT

The Irish Government’s decision, and a direct consequence of the peace process, to hold a referendum on rescinding the Republic’s claim to sovereignty over Northern Ireland, was as much culturally symbolic as a political event. Emblematic because it was arranged concurrently with the plebiscite held in Northern Ireland that ratified the Belfast Agreement. The peace process marked the intensification of cross-border co-operation at every level. Moreover, it confirmed the integrative dynamic that has been the primary motor of the European project from its post-war origins. Cross-border transactions developed exponentially and on every level after 1998, from business and trade flows to functional and civic co-operation. Official figures cited in the House of Commons Report, *Northern Ireland and the EU Referendum*, confirm that by 2015 the Republic accounted for 61 percent of Northern Ireland’s exports to the EU, 34 percent of Northern Ireland’s total exports, and likewise for 49 percent of imports and 27 percent of total imports from the EU.¹⁹ Between the peace accord in 1998 and 2015 intra-Irish trade almost doubled in value to some €2988.3m, and most notably in view of the Brexit conundrum with a differential value consistently favouring the trade flow from the North into the Republic.²⁰

Commerce is always a precursor of peaceful co-existence, Montesquieu amongst other commentators observing that, “trade is the single greatest alternative to war. The natural effect of commerce is to bring peace”.²¹ Notwithstanding the Belfast Agreement was primarily about politics than trade, functional co-operation and most especially at ground level as myriad commercial transactions and other socio-economic activities grew apace: functional connections that have been key drivers of European integration, and confirmation here as elsewhere of the interdependency of politics, prosperity and peace. Nowhere more so than in the fractured society and contested cultural space that is Ireland. The peace process here is a mirror to an already tried and tested formula that is synergy between material progress, functional co-operation and transnational politics: those sequential developments

¹⁸ K. Bush and K. Houston, *The story of peace, Learning from EU Peace Funding in Northern Ireland and the Border Region*, International Conflict research Institute, especially at Part Two: Conditions for Peace in Northern Ireland, available online at https://www.seupb.eu/sites/default/files/styles/file_entity_browser_thumbnail/public/PEACE%20Content%20Type/9668%20-%20SEUPB%20The%20Story%20of%20Peace%20D9.pdf.

¹⁹ *Northern Ireland and the EU referendum: First Report of Session 2016-17*, House of Commons, House of Commons Northern Ireland Affairs Committee (May 2016), available online at <https://publications.parliament.uk/pa/cm201617/cmselect/cmniaf/48/48.pdf>.

²⁰ *InterTrade Ireland, Potential Impact of WTO Tariffs on Cross-Border Trade*, 2017, available online at <http://www.intertradeireland.com/media/InterTradeIrelandPotentialImpactofWTOtariffsResearchReportFINAL.pdf>.

²¹ Charles Montesquieu, *The Spirit of the Laws*, (translated by A. Cohler et al, Cambridge University Press, 1989 edition), p.338

that brought about and embedded the rules-based liberal international order that has reshaped European politics since 1945.²²

The peace process in Ireland is an exemplar then, indeed the culmination of that progressive outcome that brought closure to centuries of sectarian conflict. A process too that has combined moral imperative with political determination, effective leadership and novel institutional design. On the one hand, willingness on all sides and at every level between governments and communities, to think beyond the narrow constraints of cultural prejudice; and on the other hand, using political agency to deliver power sharing and ‘parity of esteem’, a necessary bridge to overcome centuries of mistrust and hostility. Novel arrangements that are both inter-communal (as between loyalists and nationalists) and intergovernmental (between the governments in London and Dublin), a symbiosis that would not have been realized or at least not so effective without considerable expenditure of material and political capital by Brussels.

From the outset, the peace process was an international as much as merely an intergovernmental arrangement: underwritten both by Washington and Brussels and with direct involvement by the White House through the intermediation of Senator George Mitchell, appointed by President Clinton as Special Envoy of the President and Secretary of State for Northern Ireland. These intermediaries were instrumental in the critical task of decommissioning paramilitary arms, a role undertaken by the Independent International Commission headed by Canadian General John de Chastelain. Moreover, the peace process acquired added legitimacy from its incorporation as an international treaty underwritten by the EU, which imposes strict and legally binding requirements on all parties. There was no instant transformation in relations between Northern Ireland’s historic communities. What these international interlocutors did help to achieve however was concrete action that both reinforced and legitimized communal co-operation on the ground. Cumulate progress that continued under international sponsorship, with material support and political encouragement from the governments in Dublin and London as principal co-guarantors of entirely novel political arrangements, and sustained by considerable material investment, and no less important political capital disbursed within a common EU policy framework: those outcomes that brought an unprecedented peace to this long-troubled island.

The EU’s contribution to unique reconciliation by means of cross-border co-operation and wider regional integration is clear to see in the new institutional arrangements. Not only the North / South Ministerial Council that deals with matters of ‘high politics’, but the more direct impact at ground level of ‘implementation bodies’ for facilitating co-operation in matters of “mutual interest”. Principal agencies here are: Waterways Ireland, the Foyle, Carlingford and Irish Lights Commission, the Trade and Business Development Council, the Food Safety Promotion Board, the North / South Language Body consisting of two complementary agencies: *Foras na Gaeilge* and *Tha Boord O Ulstèr-Scotch*, and the Special European Union Programmes Body. These institutions and agencies contribute to closer all-

²² Daniel Bar-Tal and Gemma H. Bennin, The Nature of Reconciliation as an Outcome and as a Process, in Yaacov Bar-Siman-Tov (ed), *Conflict Resolution to Reconciliation* (Oxford University Press, New York 2004), pp.11-38.

Ireland / British Isles co-operation through regular meeting of ministers and officials, and they each have their legal base in the Belfast Agreement and the subsequent British Irish Agreement (1999) and enshrined in both domestic and international law. The Belfast Agreement extended the framework of Anglo-Irish and All-Ireland relations, mandating a new North / South Council for instance, to “consider the EU dimension of relevant matters, including the implementation of EU policies and programmes (with) arrangements to be made to ensure that the views of the [NSMC] are taken into account and represented appropriately at relevant EU meetings”.²³ In the interests of communal and political balance, there was institutionalized reassurance for unionists in the form of a complementary British-Irish Council that adds an East-West dimension to the North-South dimension. The remit of both Councils directly contributes to improved cross-border and UK / Irish co-operation in matters within the broader but complementary domains of European law and public policy.

THE BREXIT CHALLENGE

The historic achievement that is the Irish peace process is widely acknowledged and on every side of this ancient quarrel and beyond. An editorial opinion in the influential *Irish Times* sees the Belfast Agreement and the peace process it initiated as something beyond merely realpolitik. As a process that, “binds Britain to something bigger than simply refereeing the Sharks and the Jets in the North (rather) it was the culmination of an approach to conflict resolution which deliberately, but subtly, smudged the boundaries of nation states. In that way it was European in nature (and) it created treaty obligations on both Britain and Ireland to uphold, for example, Northern Ireland’s have-cake-eat-cake citizenship rules and, most distressingly for harder Brexiteers, it codified areas of North-South co-operation that cannot plausibly continue with entirely alien economic and regulatory models on different parts of the island.”²⁴ Few commentators who have reviewed this outcome of an ancient quarrel would demur from this conclusion, or at least they would not have done so until Brexit, an event whose unanticipated consequences have put this remarkable achievement in jeopardy.

Brexiteers are mostly dismissive of any such concerns. Motivated primarily with ‘taking back control’ of the British border they tend to see this historic enterprise in Ireland as merely a footnote to a troubled past, and by no means comparable to the ‘truly’ historic prize of recovering national sovereignty from Brussels.²⁵ The border settlement in this narrative is expendable if need be, ‘mere’ collateral damage in pursuit of the ultimate prize of sovereignty redux. Not for these sovereigntists apprehension let alone moral angst over risking a still fragile peace: neither reservation about reinstating a hard border that might be incitement to returning violence, nor moral reservation about throwing history into reverse.

²³ Belfast Agreement 1998, Strand Two, Paragraph 17, available online at <http://cain.ulst.ac.uk/events/peace/docs/agreement.pdf>.

²⁴ Matthew O’Toole, Belfast Agreement constitutionally binds the UK to Europe, *The Irish Times*, December 18 2017, available online at <https://www.irishtimes.com/opinion/belfast-agreement-constitutionally-binds-the-uk-to-europe-1.3330384>.

²⁵ This precisely the tone of the argument in Roger Scruton, *England and the Need for Nations*, Civitas: Institute for the Study of Civil Society (London, 2004), especially at Chapters Nine and Ten.

But Brexit has put this historic achievement at risk. The United Kingdom's decision to leave the Customs Union and Single Market will require in some patent sense a border between the two 'divorcing' political jurisdictions and economic / legal orders in Ireland, where previously and in many key respects there was only one commercial and trade regime, albeit within two states. Although Brexit does not prohibit the North / South Ministerial Council from discussing issues that arise from EU law, rescinding the primacy and direct effect of EU law in effect does release the Northern Ireland authorities from that overarching legal order. A reversal whose principal effect will weaken the legal framework and loosen the rules that facilitate co-operation between the Republic and its agencies, and their counterparts in the North that are the Belfast Agreement's juridical, political and administrative legacy. Moreover, the return of signage and the usual paraphernalia of an international border will impact negatively on the slow but sure peace process between formerly disconnected communities on either side of a reinstated border, but even more critically for durable peace between the politically long-divided and culturally separated 'tribes' in Northern Ireland. Seen through the distortive prism of history, Brexit is then both provocation and existential threat to belated reconnection if not yet reconciliation between these communities. Moreover, it risks the tentative yet cumulative integration between two neighbouring states and much improved Anglo-Irish relations. This triptych of historic accommodations is precisely what is at stake here, jeopardising the fateful decision in 1998 made possible by common EU Membership finally to answer the 'Irish Question'.

HISTORY REPEATS: BREXIT REVISITS AN AWKWARD PAST

The events that have followed the historic Brexit vote are confirmation of incipient crisis in British politics, but no less so in Ireland. Differences over issues of identity, nationhood and relations with the world beyond the Island have plagued the British Conservative Party over the course of its history. In the early nineteenth century, there was serious discord in Tory ranks over reforming the protectionist Corn Laws that almost destroyed the party as a force in national politics. A classic standoff between inward-looking and rent-seeking protectionism and out-reaching mercantilism whose main consequence was to put the Tories out of government for a generation and more.²⁶ An ideological fall out revived later that same century in the squabble over imperial free trade and tariff reform, and one revisited throughout the late twentieth century and after as civil war over Britain's place in the Europe Union.

The 'Europe' issue in recent times has translated as an ideological schism between liberal internationalist 'remainers' in the party's parliamentary ranks, and Eurosceptics viscerally opposed to the Maastricht Treaty and to every subsequent EU treaty. The latter faction gradually increased its influence in the parliamentary party and amongst rank-and-file members, and since the Brexit referendum has been active as the European Research Group, pushing its strident demand for a complete break with the EU, the hardest form of Brexit

²⁶ Tim Bale, The Tory schism: from Robert Peel and the split over the Corn Laws to the Ukip insurgency, *New Statesman* (London), 4 September 2014, available online at <https://www.newstatesman.com/politics/2014/09/tory-schism-robert-peel-and-split-over-corn-laws-ukip-insurgency>.

come what may.²⁷ The fall-out over Brexit and not least wrangling over the Irish border that is symptomatic of this ideological rift is merely the latest outbreak amongst mostly English Tories' of its own 'ancient quarrel over 'Europe'.²⁸

Whatever the outcome of this fall-out for the status of the border in Ireland and indeed much else, avoidance of the United Kingdom crashing out of the EU will depend on what the respective parties to the withdrawal negotiations can come up with by way of a final agreement. Only a multi-level bargain between the principal parties that takes due account of the preferences and anxieties of both principal communities, and of stakeholders on either side of the border can avert full-blown crisis. As things currently stand, the prospects are hardly auspicious. The response of the British Government thus far, both with regard to the particularities of the border question or on the broader question of Britain's future relations with the EU has been more dilatory than diligent. Avoidance of uncomfortable realities, procrastination in the face of difficult choices, preferring to defend what British negotiators call 'red lines', proposing bespoke 'solutions' that prioritise national interest rather than contributing to a balanced and judicious outcome is how most Brexit-watchers evaluate its performance so far. A workable solution to the conundrum that is the Irish border requires common sense and principled commitment: avoidance of a return to a 'hard' border between Northern Ireland and the Republic that avoids compromising the political, constitutional and economic integrity of the United Kingdom as presently constituted. On the British side however, the priority has been to deliver the referendum mandate by recovering national jurisdiction over borders, money, free movement of people and autonomy in matters of trade.

The default position here and frequently affirmed by British interlocutors is to propose some variant or other of the 'cake and eat it' preference that has defined the Government's approach throughout the negotiations on withdrawal. The claim that there is no need to restore a physical border, that somehow smooth transit of goods and people, uninterrupted trade flows and avoidance of cumbersome regulatory mechanisms are all achievable objectives, if only Brussels will be flexible and compromise its rigid purposes. As Brexiteers see it, a feasible outcome by applying what are usually described as 'common sense' solutions, a compound of either 'regulatory alignment' or 'equivalence', together with use of smart technology. By such means they claim a manageable and frictionless border regime might be achieved and with minimal delays to cross-border commerce and without any detriment to the recovery of national autonomy.

The catalogue of potential 'solutions' that combine customs arrangements with smart technology are reviewed in the third paper in this series, their difficulties identified although without dispelling doubts that such arrangements for what are glibly prescribed in some quarters as 'simple' solutions may in fact be rather more simplistic than straightforward. 'Experts' so-called, a term that has lately acquired negative connotations in an age of 'alternative facts' and 'fake news' remain mostly unconvinced about the feasibility of such 'obvious' solutions to complicated issues, pointing out patent drawbacks. The promise of smart technology is a case in point, for even where there is political goodwill on both sides technology can only go so far towards ensuring frictionless borders, especially in this

²⁷ Dan Sabbagh and Caelainn Barr, Jacob Rees-Mogg and the shadowy group of Tories shaping Brexit *The Guardian* (London), 6 February 2018, available online at <https://www.theguardian.com/politics/2018/feb/06/jacob-rees-mogg-and-the-shadowy-group-of-tories-shaping-brexit>.

²⁸ Stephen Bates, Two Sides of the Same Party, *History Today*, Volume 63 Issue 3 March 2013.

politically problematic, historically contested region. Not least, where transit involves mixed cargoes, both of product type or where traded goods are subject to different technical standards and regulatory requirements or where post-Brexit tariff rates and amounts of duty applied are variable rather than uniform.

For all of these reasons, the Irish border remains an unresolved question, an immanent challenge and for both sides in current negotiations. How then to ensure the easiest passage both ways over what is a long and geographically challenging border, some 500 kilometres in length and with over 250 crossing points? A difficult enough undertaking even in normal circumstances, but altogether more exacting for the management of a border resonant with political memory. There is more assurance on the British than the Irish side that the border conundrum is solvable, but then again unalloyed optimism has been the United Kingdom's default position throughout these negotiations, but so far without finding any satisfactory answer to this latest version of an enduring 'Irish' question.

The EU for its part has to date been altogether more circumspect in its responses to British proposals. The response of the EU's principal negotiator to United Kingdom proposals for the Irish border published in August 2017 was hardly encouraging, asserting that, "what we see in the UK paper is a lot of magical thinking about how an invisible border would work in the future..... if you look at the Irish paper, it is very good on aspirations but it is short on workable solutions."²⁹ There is unease then in Brussels that the United Kingdom is treating the border more as political hostage than a merely functional issue to be resolved, using the issue as convenient leverage to gain concessions on its future trade relations with EU27.

What will be the fate of the latest United Kingdom proposal, the so-called Chequers deal for a 'facilitated customs arrangement' and the proposal for a 'common rule book' to ensure frictionless trade, and whether this will resolve the border imbroglio remains to be seen. The indications thus far are less than reassuring. Officials in Brussels tend to view British responses to the border question, indeed to Brexit per se through the distortive lens of an assumed British exceptionalism. To see this latest plan as they saw its predecessors, principally as a bargaining counter for securing selfish ends: the intention above all else to free ride, to subvert the rules and logics of the Single Market and Customs Union for narrow national advantage. Yet more cherry picking, another attempt to undermine the "indivisibility of the single market, a position the European Commission... want to defend — even if the price is a no-deal Brexit."³⁰ These perceptions, or misconceptions depending on the preferred narrative, are critical to what is at stake between these quite different, indeed countervailing outlooks on the daunting challenge facing the parties to the current negotiations. Whether the outcome of the border conundrum is final answer to the seemingly endless Irish question remains to be seen.

²⁹ Jennifer Rankin, UK accused of 'magical thinking' over Brexit plan for Irish border, *The Guardian* (London), available online at <https://www.theguardian.com/uk-news/2017/aug/25/uk-accused-of-magical-thinking-over-brexit-plan-for-irish-border>.

³⁰ Alex Barker, *Financial Times* (London) 10 July 2018, available online <https://www.ft.com/content/aeb53c82-82ac-11e8-96dd-fa565ec55929>.

