

FEATURE

The future of the Irish border

Katy Hayward

Brexit has placed the Irish border at the centre of European politics. Westminster urgently needs to wake up to its histories and complexities.

We have discovered recently how little some politicians in Britain know about the island of Ireland. Their weighty pronouncements and momentous decisions about the future of the Irish border are unburdened by knowledge. They are free from the sense of responsibility or caution that even a cursory glance at Irish history and politics would surely encourage.

Marina Hyde has described British government ministers as moving from ‘post-truth’ to ‘post-shame’.¹ This is an all too apt description when it comes to the Irish border issue. There is apparently no shame in seeking to exploit British ignorance about Northern Ireland. In fact, such ignorance is nurtured in order to secure implicit permission to play with the peace.

Amid all the hubris and the defiant rhetoric, we can find the familiar push-pull of British and Irish nationalism – something that we thought had been indefinitely suspended twenty years ago. This is a tug-of-war, and the Irish border is the rope.

The consequences of previous decisions made in England about Ireland remain all too evident in Northern Ireland and the border region. A friend in Co. Down (who, as it happens, is a former customs officer) likes to tell visitors to the area that it is not an *Irish* border but rather an *English* border: one that was inconsiderately left behind. Trying to find future arrangements for this border that accommodate both pragmatic and symbolic imperatives requires acute levels of perspicuity. It also requires an ability to look towards the long-term implications of the policies and decisions that may be stumbled upon in the heat of negotiations.

A perfect storm

The current disagreement about the future of the Irish border is not some minor parlour-game that is being played out in the corner of the so-called British Isles. This is a process of *European* interest. Ironically, Nigel Farage's rallying cry to 'take back control' of our borders demonstrated the deep commonalities between British and continental European politics. The drive to harden and monitor borders is present across Europe – the EU itself is in the middle of a major process of upscaling its capacity to manage its external borders. It is doing so under pressure from member states, who are strengthening their own border controls, building border fences and voting for anti-immigration parties in a way that would have been inconceivable a decade ago.

All of this has consequences. Becoming an external border of the European Union is nothing less than a perfect storm for the Irish border. Whatever your viewpoint on Brexit, fundamental changes in both the United Kingdom and the European Union are making the task of preparing for it all the more difficult. This is exemplified in the conundrum of the Irish border.

The factors shaping the future of the Irish border are no longer subject to assumptions about the future that were valid until just a few years ago. Close communication between British and Irish officials, and trusting relationships between British and Irish politicians, have traditionally been enabled by common EU membership.

Incredible as it may seem, after decades of careful nurturing, the assumption of a deep and close British-Irish partnership can no longer be sustained. This change in the intergovernmental relationship has transformed the conditions for managing the current state of uncertainty regarding the post-Brexit Irish border. As one observer of Anglo-Irish relations commented to Tony Connelly:

The fear is that Dublin is relying on an old British system that has passed. There is no predictability. There has been a paradigm shift. This is the difficulty for Ireland.²

Given the lack of political sensitivity and historical awareness about the Irish border and Northern Ireland's peace process among many commentators in Britain, trying to plot a way out of the uncertainty sometimes feels like trying to hold up a tent in a storm—after the guylines have been cut.

One way out of this, however, is to look at what we can be sure of. This is what I will aim to do in this brief piece, starting with the present day and moving backwards. I will discuss the EU's draft Withdrawal Agreement, the 1998 Agreement and the history of the Irish border. There are some clear pieces of information and lessons

to be drawn from these, which can be used to at least plot the coordinates for a future re-stabilisation of British-Irish relations.

Exit and EU borders

The UK government has never been clear that Brexit will inevitably – and necessarily – be a drawn-out and complicated process. There will be no free trade agreement to wave around on 29 March. An orderly Brexit would proceed along a route with four critical phases: withdrawal; transition (whilst negotiations on the details of the future relationship continue); new treat(ies); then implementation of those new treaties.

It is worth taking the time to ‘Brexit’ carefully and over a long period, not only because of the complexity of the task but also because of the existence of potential constraints on the future relationship. This is particularly evident in the instance of the Irish border – not only as a state frontier, but also as the point at which the new UK-EU relationship will be made manifest.

Member states at the EU’s external frontier have to apply the necessary border controls rigorously, despite the inconvenience and disruption caused. And the EU is also used to having complicated land borders. That said, there is hope that it is possible to compose unique arrangements for the Irish border after Brexit. Such hope arises from the guidelines put forward by the EU Council at the start of the UK withdrawal process. These were approved by all 27 member states:

The Union has consistently supported the goal of peace and reconciliation enshrined in the Good Friday Agreement *in all its parts*, and continuing to support and protect the achievements, benefits and commitments of the Peace Process will remain of paramount importance.

In view of the unique circumstances on the island of Ireland, *flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order.*³ (emphasis added)

The allusion to ‘unique circumstances’ points to the history, the conflict and the peace process on the island of Ireland, as well as its geographical and economic particularities.

The UK, too, as made clear in the Joint UK-EU Report on the state of negotiations at the end of 2017, is fully committed to the same outcome: no threat to the peace process, no diminution of the 1998 Agreement, and no checks or controls or physical infrastructure at the border.⁴

The big challenge, of course, has been translating this into action. This is a political problem, not merely a technical difficulty.

The Withdrawal Agreement

The Protocol on Ireland/Northern Ireland in the draft Withdrawal Agreement was the EU's first attempt at putting these commitments into legal text. The Withdrawal Agreement is, we are led to believe, currently (October 2018) 90 per cent agreed. There is still much in the Protocol, however (including the notorious 'backstop' arrangement), that has not been agreed, even in principle. The current proposal would see Northern Ireland stay within the EU's customs territory and single market for goods, if future negotiations on the wider UK-EU relationship are unable to meet the aforementioned commitments of the Joint Report. Whilst the UK government condemns this scenario as threatening the constitutional integrity of the UK, the EU sees it as a demonstration of flexibility: it offers many of the benefits of EU membership to Northern Ireland, without it formally being in the EU.

What is the likely outcome? Even without being sure of the detail of the Protocol in the final Withdrawal Agreement, it is possible to predict some things about the post-Brexit border. It will be harder. The UK and EU will be on different trajectories. As long as Northern Ireland is not in the EU, it will feel the consequences of that divergence.

What will this mean in practice? We can expect variation in the way that the border is experienced for different types of movement. The Irish border will be harder for some things (e.g. movement of services) but soft for others (e.g. for the island's single electricity market). Similarly, we can expect that the border will be felt as more 'dispersed'. Border controls are more likely to be imposed away from the line of the border itself. The location of these controls, the form they will take and the disruption they will cause will depend on the quality and the detail of the final UK-EU deal.

The question of whether the 'backstop' will come into play in full or whether it will be only partially utilised is one that will be tested against the standards broadly set out in the Joint Report of December 2017. Central to this will be the functioning and operation of the 1998 Agreement.

The 1998 Agreement

The 1998 Agreement is relevant to the future Irish border for several reasons. First, although it has been subject to severe criticism, there is no alternative model for managing the conflict in Northern Ireland. The Agreement will persist after Brexit, and it has means for helping to navigate the fallout from it.

The constitutional amendments, institutions and principles of the Agreement embody the assumption that the contested nature of the Irish border is at the heart

of the conflict and reflected in clear distinctions between British/Unionist and Irish/Nationalist. This is quite deliberate: the multiparty Agreement was framed in this way so that it could be underpinned by a solid relationship between the British and Irish governments. If the two governments agree on an approach to the border, then the assumption was that this would enable progress within Northern Ireland between communities that look either to London or to Dublin for guidance.

As partners in the EU, the British and Irish governments could manage the border in a way that emphasised practical benefit and common interest, without prejudice to the legitimacy of both Unionism and Irish Nationalism. Institutions for devolution, north-south cooperation and east-west collaboration sought to reframe the border as a point for cooperation, not conflict.

This does not remove the border as an issue; in fact, it gives it a newly important symbolic status. This can be seen in one of the central trade-offs of the agreement: Unionist acceptance of the possibility of a border poll, in exchange for Nationalist acceptance of the need for majority consent in Northern Ireland for any change in the status of Northern Ireland.

The Irish government retracted its claim over the six counties, and recognised the legitimacy of Unionist aspirations as well as the principle of majority consent. This was not a one-way concession: the British government recognised the legitimacy of Irish Nationalist aspirations and the principle of self-determination on the island of Ireland, and agreed to enact this if certain conditions were met.

Note the language from the Northern Ireland Act (1998), which gave effect to the intergovernmental agreement arising from the conclusion of the multi-party talks in Northern Ireland in April 1998:

(1) It is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1.

(2) *But if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland,* the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between Her Majesty's Government in the United Kingdom and the Government of Ireland. (Northern Ireland Act, 1998, Part 1, section 1).

The anticipated referendum on the constitutional status of Northern Ireland is essentially a stark either/or choice between the UK and Ireland. Despite having introduced multilevel institutionalism and power-sharing, in an effort to move democratic representation in Northern Ireland beyond zero-sum calculations, the

border poll allowed for in the 1998 Agreement proffers a scenario in which the will of a majority will be imposed on a staunchly reluctant (or resistant) minority.

The possibility of a border poll therefore casts a shadow over most electoral politics in the region. It means that efforts to create a new form of consociational, power-sharing politics are made against a background in which it is clear that a shift in a majority – a loss for Unionism or a gain for Nationalism – can completely transform the constitutional status of Northern Ireland

When one adds Brexit to this mix, the consequences of a border poll become all the greater. There has been a lot of flurried speculation recently about Brexit hastening a border poll and making Irish unity more likely. A crude reading would see this as ‘solving’ an irritating problem for Brexiteers.

However, speculation about a post-Brexit border poll tends to overlook the realities of public views about the constitutional status of Northern Ireland. If we compare the Northern Ireland Life and Times Surveys from 2016 and 2017, we see that there has been a drop in support for devolution within the UK as the preferred long-term future for Northern Ireland (from 54 per cent in 2016 to 47 per cent in 2017).⁵ Most of this drop has not, however, been accounted for by a shift towards a united Ireland (which grew by a statistically insignificant 1 per cent between 2016 and 2017). Instead, there has been a shift into the category of those who say they simply ‘Don’t Know’ (+3 per cent).

In the same survey, it is notable that when people were asked how they would vote if there were a border poll held tomorrow, 55 per cent said they’d support Northern Ireland remaining in the UK, while 22 per cent said they’d vote for Irish unity – the same figure as those who said that either they didn’t know or wouldn’t vote. It is misguided, therefore, to assume that a Catholic background means a vote for Irish unity. Perhaps the most significant group in a future border are those who currently ‘Don’t Know’ and would wait to see what unfurls.

This tallies with other polls on Brexit in Northern Ireland, which show that people expect their views on the future of Northern Ireland to be shaped by the type of Brexit that is finally revealed, i.e. the ‘harder’ the Brexit, the greater the support for Irish unity.⁶

In sum, the 1998 Agreement is not just about ‘transcending’ the border. It brought political differences about the border to the heart of the constitutional arrangements in Northern Ireland. The uncertainty about the future for Northern Ireland is compounded by the existence of provision for a border poll. As long as such a poll is expected to put a binary either (UK)/or (Ireland) question before the people, it is inevitable that Unionists will continue to be wary of compromise, or of allowing any loosening of ties with Great Britain.

Lessons from the past

It is with such sensitivities in mind that we now look to the past century of Irish history for lessons as to how to approach the Irish border as a manifestation of a new British-Irish relationship.

The Government of Ireland Act 1920 was the first to draw the Irish border. It was viewed as a temporary measure with the intention of securing a Protestant majority as a means of stability for the northern statelet. It anticipated devolved government in both the 'northern' and 'southern' parts of Ireland, together with an interparliamentary Council of Ireland to coordinate on areas of common interest. The Northern Ireland Parliament came into being in 1921 but there was no such settlement in the south, until the conclusion of the Irish war of independence with the Anglo-Irish Treaty of 1921. This saw the continued partition of the island, but gave the southern government dominion (not devolved) status in the form of the Irish Free State. Responsibility was left with a Boundary Commission to determine the future delineation of the Irish border.

The Boundary Commission

The first lesson from this period relates to the conduct and remit of the Boundary Commission. It is fair to say that the Boundary Commission was intended as a reassurance to those unhappy with the arrangements in 1921, showing that the matter was in no way 'settled' but would instead be reviewed on the basis of evidence. In practice, it was three years before the Commission became operational, and its activity was criticised from all sides.

Even before it was published, the leaking of the Commission's Report revealed that its findings would please no one, and an alternative was therefore found in the form of the Tripartite Boundary Agreement of December 1925 – after Northern Ireland had been living for five years under the uncertainty produced by the Government of Ireland Act. The 1925 Agreement discarded the Council of Ireland and rejected even the modest border proposals of the Boundary Commission, thus leaving what was roundly agreed to be a poor and inadequate temporary fix in place for an indefinite length of time.

In terms of lessons for the present day, it is worth noting that the Boundary Commission was proposed as a means of getting agreement during a difficult negotiation, allowing a certain degree of ambiguity even in terms of its remit and purpose. Both the British and Irish expected different – even contradictory – things from its operation. In practice, the scale of the task (and its political sensitivity) was hugely underestimated. The Commission itself was small and under-resourced, and operated under considerable political pressure as well as public speculation.

The customs border

It is notable that a hangover from the Tripartite Boundary Agreement fed into another event that hit the Irish border – the dispute over the payment of land annuities. This dispute between the Irish and British governments escalated into an Anglo-Irish trade war in 1932, which saw increased inconvenience, disruption and complexity at the Irish border, as well as at the ports. The most direct and negative effects of this trade war were felt in the region on either side of the Irish border – an area which was already suffering the effects of peripherality and underdevelopment. What this tells us is that the Irish border and its vicinity is often the place where the blunt edge of tension in the British-Irish relationship is most acutely felt. It is also the area that takes the longest to recover from breakdowns in cross-border relations.

The Common Travel Area

The Common Travel Area – which persisted even during the trade war – shows that the movement of people between these islands is handled separately from the matter of customs. The Common Travel Area was suspended during the Second World War (or the Emergency, as it was known in neutral Ireland), and not put back in place until 1952. This shows that border controls between Britain and Ireland can be moved and adjusted according to what is seen to be the most pressing political need of the day for the respective governments.

In the 1940s, the British viewed entry of people from Ireland without checks to be an unnecessary risk, but considered it easier to impose checks at British entry ports rather than the Irish land border. In the late 1990s the Irish government decided to introduce immigration checks on all passengers, including those coming in from UK flights. More recently, Irish authorities introduced checks near the Irish border, mainly in the form of police spot-checks on passengers taking public transport from Northern Ireland into the Republic of Ireland. This underlines the differences in immigration regimes between the two countries. It also shows that the requirements of the Common Travel Area are interpreted differently by the UK and Ireland, according to contemporary political priorities.

Security

Finally, it is worth remembering how it was that the state and customs border became hardened into a securitised border during the 1970s. In his 2017 study *Bombs, Bullets and the Border*, Patrick Mulroe locates this process in the early 1970s. The introduction of internment (imprisonment without trial) as a means of attempting to manage republican violence in Northern Ireland had resulted in more refugees

from Nationalist communities moving south of the border. There was also an upsurge in violence on the border, which was seen as a target for paramilitary violence because it symbolised and contained material manifestations of British state rule and policing. Unionists, in the border region in particular, urged action from the state authorities, believing violence to be increasing as a result of incursion into Northern Ireland from republicans based in the south. In response, the British army would ‘crater’ or ‘spike’ roads near the border, including minor roads that were seen as attractive routes for those with nefarious intentions. Locals would then refill the craters or remove the spikes, angry at the inconvenience caused to their daily lives by these road blocks, as well as at the demonstration of British state power. This process of closing and reopening roads would happen dozens of times in some places, until the British army then moved to close roads on a more permanent basis.

Mulroe’s research shows how – far from removing the terrorist threat – such road closures led to an increase in incidences of violence at the border. Before internment, there were on average four border ‘incidents’ a month. This rose to sixteen a month after internment and thirty-three per month after ‘cratering’. We see in this process the way in which the border is a micro-level manifestation of wider tensions, even tensions between the two governments. We also see the exploitation of the powerful symbolism of the border by those on both sides. The harm done to the border region – economically, socially, politically, culturally – by actions that were intended to be temporary has yet to be fully overcome.

Looking ahead

What do the lessons from the Withdrawal Agreement, the 1998 Agreement and almost a century of history around the Irish border tell us that is relevant for today?

First, we must be wary of ambiguity regarding all agreements relating to the border. It is not enough merely to get ‘over the line’. Even measures that have the best of intentions, and seek to give both sides something to ‘sell’ from the final deal, can actually prove more problematic in the long-run. There is going to be scope for ambiguity regarding the final operating arrangements in the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement, but there should not be ambiguity concerning the remit, purpose, resourcing or accountability of the mechanisms created to implement and oversee the final arrangements.

Secondly, we can expect a mix of ‘soft’ and ‘hard’ borders around Northern Ireland after Brexit. There will be continuity in relatively free movement for some things within the island (e.g. animal products), but this is likely to be matched by greater friction between Britain and Ireland. At the same time, the movement of other things (e.g. services) will be easier between Britain and Northern Ireland than between Ireland and Northern Ireland. Not all of this will take the form of controls

at the border; instead, 'pushed-out' border controls, away from ports and entry points, could mean that bordering processes will become a more common feature in everyday life and business. What is deemed to be a 'temporary' but necessary measure may well prove to last indefinitely.

We should also expect both governments to be capable of using the Irish border to cause irritation to the other. There is a symbiotic relationship between relations at the border and between the UK and Ireland at the highest levels. When this relationship is a good one, people at the border reap the benefits; when there are tensions, it may be anticipated that these will be felt at the border too. This is a place of enormous political sensitivity and economic vulnerability.

Even if the Irish border is moved, pushed out or removed, the decisions made today on this matter will have enormous consequences for daily life as well as for politics in Northern Ireland. This impact will not be confined to the periphery of the UK and Europe. The Irish border is a thread of deep connection between Britain and Ireland, and what happens to it in the Brexit process will have ramifications beyond this region and beyond this generation.

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This lecture was delivered as a keynote address to the biannual Conference of Irish Historians in Britain and to members of the public at the Tyneside Irish Centre, 8 September 2018. The author wishes to express her appreciation to both the Conference and the Centre for facilitating the lecture and discussion.

Further Reading

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Notes

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