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Why it is impossible for Brexit Britain to 'take back control' in Northern Ireland

A response to John Agnew

Katy Hayward

In 1984, the European Parliament published a report on the situation in Northern Ireland. It was drawn up by the Political Affairs Committee, under the leadership of Danish MEP Nils Haagerup, in response to a motion from MEPs seeking to address 'one of the gravest political and social problems existing in the Community' (Haagerup, 1984). In the report that Haagerup produced, we see the roots of the approach taken by the EU to supporting the peace process in Northern Ireland (Hayward, 2006). In sum, the integrative model of sovereignty exemplified in the EU (as Agnew [this issue] describes it) has been fundamental to the 1998 Good Friday (Belfast) Agreement and, therefore, to the political environment in Northern Ireland. This is why, in the most fundamental terms, a 'clean break' Brexit was always impossible when it comes to this small region of the UK. Moreover, the mere existence of Northern Ireland has brutally exposed the fallacy of 'taking back control' as it was originally presented by the campaign behind the UK's withdrawal from the EU.

Agnew is absolutely right to focus in on the Brexitian quest to 'take back control' of the UK's borders. In this three-word slogan we see not only the misunderstanding of the nature of territorial sovereignty in the contemporary world, as Agnew so clearly explains, we also see a misrepresentation of the UK's borders themselves. First, there is the underlying assumption of the UK as an 'island nation' – for whom border control merely means shoving unwanted intruders back towards the sea. Secondly, there is an assumption that border control means, simply, immigration control. In the crudest logic, 'taking back control' of the UK's borders equated to pulling up the drawbridge. The Irish border – running across the island of Ireland and separating Northern Ireland from the Republic of Ireland – is neither a maritime border nor a line of immigration control. Its very existence disrupts the Brexitian conception of the British state.

The fact that the Irish border is a point of connection between the UK and Ireland (and the rest of the EU) was never fully appreciated in Britain. Also overlooked was the fact that European integration meant so much more than the free movement of people. This is particularly evident in European border regions (Kaplan and Häkli, 2002), which is of course something that Northern Ireland is the only part of the UK to directly experience. In intra-EU borderlands, we see the manifestation of what Teague (1996: 565) describes as the objective of the European integration process, namely 'not to wither away existing constitutional borders, but to promote peaceful co-existence between different nations'. European integration has meant the intricate weaving of connections and ties between the UK and Ireland as EU member-states, including across the Irish border (Anderson et al., 2001; Murphy, 2014). These ties and connections are manifest in areas that do not generate headlines but in ones that are essential for improving quality of life and capacity for development in border regions, such as water quality, food safety, and smooth processes for extradition (Lagana, 2017; McCall and O'Dowd, 2008). The wider process in which the UK

and Ireland were on the same trajectory as EU partners – give or take slight differences, such as membership of the Eurozone – was a vital context for ensuring the improvement of relations between them (Meehan, 2006; Tannam, 2018). This in turn had a positive effect on transforming relations across the Irish border and within Northern Ireland (Hayward, 2009). It is this British-Irish relationship that underpins the whole peace process.

Looking again at Haagerup's report for the European Parliament over 35 years ago illuminates why this is the case. In trying to identify the cause of the conflict, Haagerup (1984: 7, 13) defined the situation in Northern Ireland in terms of two 'conflicting national identities'. If, as Agnew eloquently puts it, the goal of nationalist movements is 'to make sovereignty and territory match' (this issue, p.4), the creation of Northern Ireland was a crude effort to apportion parts of the territory of the island of Ireland to separate sovereignties. The fact that majorities change over time, with political and demographic movements, mean that making sovereignty and territory match in the case of Northern Ireland was always an inexact and temporary 'solution' (Bew et al., 1979). This was recognised by those involved in the very beginning. Despite the intrinsic and ingrained difficulties in the functioning of Northern Ireland, the problems of the regional government were conceived primarily in terms of the contestation over sovereignty of the place. The Irish border was seen not only to exemplify this difference but also to be a place at which British-Irish tensions could be made manifest and visible (Mulroe, 2017; Patterson, 2013).

Arising from this, the EU's approach to the conflict has been propelled by the belief that it is caused by historical antagonism between British and Irish nationalisms and identities. Reading this in light of Agnew's article, we can deduce two important points. First, Northern Ireland reveals the flaws in what Agnew (this issue, p.4) identifies as the 'mythos of territorial sovereignty in which the territory of a state represents both the zone of effective control exercised by that state and the only focus for political and cultural loyalty'. Furthermore, the very existence of Northern Ireland shows that neither Ireland nor the UK can sit comfortably with a simplistic understanding of territorial sovereignty. Ireland's own constitution recognised the incompleteness of its territorial sovereignty (Hayward, 2009). For the UK, it is evident that a proportion of the population in Northern Ireland have a focus for loyalty that is outside the region (McAuley, 2015).

A second important point to note about Haagerup's analysis is that the EU does appear to view the integrity of national identities as unproblematic. The report draws a direct line of connection between the 'two communities' in Northern Ireland and the two states. Recognising that Protestants 'feel as British as [Catholics] feel they are Irish', Haagerup (1984:16) draws a fundamental connection between the conflict between the two 'communities' in the province and the tension between the two governments. The symbolic power of the Irish border in some ways became more significant in a context in which its economic significance was diminishing (Wilson, 1993). The EU thus came to view the resolution of the conflict in Northern Ireland as dependent upon: (a) a good intergovernmental relationship, and (b) the peaceful, democratic expression of the two national identities concerned. Toleration, rather than transformation, of the identities in the conflict is the goal that the EU sets in relation to Northern Ireland.

The Good Friday (Belfast) Agreement of 1998, following the multiparty negotiations, reinforced this understanding of the causes of the conflict and the means of its resolution (Fenton, 2018). Put simply, the Agreement reifies the two-community thesis of Northern Ireland. It refers to 'both communities' in terms that assumes the division between them relates to political aspiration, national identities, ethos and values. In some ways, therefore, it reinforces a simple understanding of community in Northern Ireland as being clearly bounded by a single line that cuts clearly between two religious denominations, national identities and options for the constitutional status of Northern Ireland (Protestant/British/Unionist and Catholic/Irish/Nationalist). These differences are exemplified in attitudes to the Irish border. It is either a site of ethnic cleansing and line of protection of Northern Ireland or a place of brutal partition and an artificial division caused by colonialism. The very creation of Northern Ireland shows that the search for 'territorial exclusivity' and the 'mapping and partition strategies' to which Agnew refers (this issue, p.8) were neither exclusively historical nor foreign escapades but policies which had a direct and lasting impact in the domestic sphere of the UK. However, the 1998 Agreement marked a turning point. The UK would no longer seek to address these negative consequences by seeking to strengthen the power of one community, or by ignoring the different identity and aspirations of the other. Instead, they would be given equal weight and importance.

And this is why Brexit is so unsettled by the Good Friday Agreement 1998 (Hayward and Murphy, 2019). The Agreement marks a recognition by both the British and Irish governments that there can be no such thing as making territory and sovereignty match in Northern Ireland. The realities of the competing and diffuse national identities in the region made it necessary to have a much more nuanced understanding of sovereignty. First, the understanding that sovereignty can be shared – as seen in the existence of the three strands of the Agreement: within Northern Ireland, on the island of Ireland, between these islands. Second, the admission that sovereignty can change – as seen in the provision for a border poll in which a majority may vote for Irish unification. The potential for a shift in the constitutional status of Northern Ireland is built into the Agreement. Third, the recognition of the potential for dual identities – as seen in the acknowledgement of people's right to be 'both' British and Irish in Northern Ireland. Finally, the parity of esteem and mutual recognition given to 'both' communities in Northern Ireland – as seen, at least in theory, in the equal validity of British and Irish identities and unionist and nationalist aspirations, shored upon the cooperation of the British and Irish states.

The risk and tensions in recognising the unfixed nature of Northern Ireland's sovereign and constitutional status are defused by the formal means of sharing sovereignty that are present in the Agreement itself. In this way, the complexity of sharing sovereignty is embedded into normal practice and the supportive, integrative environment of the European Union. Agnew's explanation of this regime is very useful here. He describes the 'coexistence between different levels or tiers of government and the distinctive functional areas that are represented differentially across the different levels, from EU-wide to the national-state and subnational regional' (this issue, p.13). The multilevel modes of governance established by the Agreement – within Northern Ireland, across the Irish border, between the two islands – enable decision-making on a scale that is subnational as well as

supranational (Murphy, 2007). They only make sense in the context of the EU. In so doing, the simple model of exclusive territorial sovereignty is incompatible with the politics, experience and theory of post-Agreement Northern Ireland. And so we come to the challenge of Brexit. If, as noted above, the clean break 'taking back control' model of Brexit was always unworkable given the status of Northern Ireland, we can see why the UK's withdrawal from the EU has come to centre on the future Irish border.

The models proposed for managing the Irish border after Brexit have followed three broad lines. First, to have a hard border of division between the UK and the EU that is managed through the 'latest' forms of customs facilitation and border management. Much of this entails increasing surveillance and data-gathering of behaviour within the state. This has been proposed in order to give the UK as much 'sovereignty' as it wishes, primarily in terms of diverging from the alignment in rules and regulations that have enabled the integration of the border region in the first place. Whereas the focus has been on the border as the external boundary of the customs union and single market of the EU, the reality is that the depth and breadth of cross-border cooperation on the island of Ireland also shows the limitations of the notion of exclusive territorial sovereignty that a hard Brexit seeks to attain. This is before we even consider the fact that giving Irish citizens (as EU citizens) more rights than British citizens in Northern Ireland post-Brexit places additional strain on the Agreement. In sum, for various reasons outlined elsewhere, this model is simply unworkable both in practical and in theoretical terms for the challenge posed by Brexit in Northern Ireland.

The other two models have worked from different angles, both of which have recognised the impossibility of complete separation of Northern Ireland from the EU socio-legal and economic framework. Even if Northern Ireland is outside the EU, avoiding a hard Irish border (as is the determination of both the UK and EU) means close alignment of the region to a spectrum of EU rules post-Brexit. The difference between the two models centres on whether this a necessity for the UK a whole or one that can be contained within Northern Ireland. The 'backstop' in the Withdrawal Agreement negotiated by Theresa May in November 2018 was along the lines of the first of these, i.e. seeing UK-wide alignment with EU's customs and (to a lesser extent) single market rules as being the only way of ensuring no hard borders on the island of Ireland or between Britain and Northern Ireland. This model was roundly criticised by the majority of pro-Brexit groups (including in Parliament) who resented this continued closeness to the EU, which they saw as setting limitations to national sovereignty and impeding the quest to 'take back control'. The alternative that has gained much more support from pro-Brexit groups is to approach Northern Ireland as the region which keeps the UK closely connected to the EU – and to ring fence it by increasing the significance of the border within the UK, i.e. between Britain and Northern Ireland. Whilst this means only a certain stepping-up of checks and controls in the movement of goods across the Irish Sea in the first instance, this raises deep concerns for unionists in Northern Ireland. Central to these is the fact that there is no end point to this process; the Irish sea border would presumably grow in hardness if Britain plots a sharp course of divergence from the EU over time.

As we would expect, all of these models for the future management of the Irish border after Brexit have been understood in terms of the constitutional status of Northern Ireland, in terms of national identity and in terms of political aspiration. The simplistic understanding of territorial sovereignty behind the Brexitan quest has served to expose the fundamental incompatibility of conflicting identities and sovereign claims over Northern Ireland. The inability to accommodate the complexity, the sharing of sovereignty, the multilevel nature of governance, and the complementary nature of identities in Northern Ireland has become increasingly obvious in the debate on Brexit over the Irish border. It is having an increasingly real impact. This is seen in the way a respondent in a survey in the central border region of Northern Ireland/Ireland described what a hard border would mean to him:

The loss of everything I thought we'd achieved in the Good Friday Agreement: shared space; goodwill and cooperation; mutual acceptance of identity and aspirations; and a chance finally, to put the past behind us. We are at grave risk of being dragged back 20 years or more and I find that both appalling and heart-breaking. (Respondent 12, *The Border into Brexit*)

By freshly incentivising each of two conflicting and mutually-defeating quests to match sovereignty and territory in this British-Irish region, the Brexitan vision of returning to a UK of the past could well propel Northern Ireland back several steps into a much-regretted history.

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