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ABSTRACT

The 1998 Good Friday (Belfast) Agreement defined the conflict in Northern Ireland as being over the border between this part of the United Kingdom (UK) and the Republic of Ireland. This article defines and understands the Agreement as one of a number of 'border regimes' that operate between the two jurisdictions on the island of Ireland and, in doing so, seeks to explain how it is that Brexit has such significant implications for the management of conflict and mobility here. Against the backdrop of the European Union’s (EU’s) external border regimes, we argue that the most significant point about border regimes is not inclusion/exclusion across a state border but hierarchies of rights and treatment within a jurisdiction. This helps illustrate why it is that the UK’s withdrawal from the EU holds such significance for the peace process in Northern Ireland and for mobility within and across the islands of Ireland and Great Britain more broadly.

Introduction

The Brexit debate in the United Kingdom (UK), especially in the run-up to the referendum, focused on the movement of people. In particular, Leave campaigners emphasized the desire to ‘take back control of borders’, by which they meant ‘to reduce immigration’. This logic quickly ran into difficulties after the referendum in the face of two main obstacles: first, the European Union’s (EU’s) insistence that the four ‘freedoms of movement’ are inseparable, which means that there could be no freedom of movement of goods without freedom of movement of people; and second, the problem of the border on the isle of Ireland between Northern Ireland (as a part of the UK) to the north and the Irish Republic to the south. This is a border across which the UK government is keen to see continuation of free movement of British and Irish citizens but which would become, post-Brexit, an external border of the EU. What is more, if the UK as a whole left the Single Market without providing for bespoke arrangements for Northern Ireland, the Irish
border would become a border that the EU would have to manage and reinforce as a boundary to the four freedoms. Thus, the same rights and movement – people, goods, services, capital – could not then be enjoyed on the northern side of the UK–Ireland border as on the southern side.

The UK government has approached the Brexit negotiations as if it were the task for a singular, undifferentiated state; this is entirely reasonable at one level, seeing as the referendum created a slim UK-wide majority for Leave, given the size of the English population compared to the Remain-voting Scotland and Northern Ireland. The rationale for the UK government’s ‘One Nation’ approach is entirely compatible with the nationalism that propelled the Leave vote in the first place. Such Anglo-centric nationalism sees borders as lines of inclusion/exclusion that can be quite straightforwardly managed. This reflects a conception of the British people as being an ‘island race’, surrounded by sea and with clearly demarcated boundaries to the nation (Whittaker 2017). Such a form of nationalism sits very uneasily with the experience of other regions of the UK and, more specifically, with the existence of a UK land border and with the realities of the 1998 Good Friday (Belfast) Agreement (GFA), which maintains a very different version of sovereignty and border management – one that comes from the tradition of EU rather than British Empire. In this EU/1998 Agreement approach, national borders are not so much sharp lines of division but meeting places between states. The best way of understanding the UK–Ireland border is as a site of integration and cooperation, not as a crossing point between jurisdictions that can be easily managed.

In what follows, we first introduce the kind of popular understanding of borders that formed the backdrop to the 2016 UK Referendum on exiting the EU. We then position our own use of the concept of ‘border regimes’ within the broader field of border studies and explain its relevance to the paper’s focus. Since we borrow this concept from Berg and Ehin (2006), we detail their understanding of its three analytical elements, i.e. function, governance and openness. Using these elements, we demonstrate that, despite recent efforts towards close coordination, the EU external border regime is characterized by inconsistency and variation; this variation may serve as a precedent for the model of the transformed UK–Ireland border as an external EU border. We then outline the layers of concentric border regimes that have shaped this border historically.

Border regimes demonstrate the diffuse operation of borders as networked systems of rules that regulate behaviour and are activated by the mobility of people and things at a variety of scales. The border regimes of the UK–Ireland border also show that the internal UK political and legal space is already characterized by differentiation. On this basis, we discuss the implications of Brexit for the future of these ‘Irish border regimes’. In our conclusions, we maintain that the concept of ‘border regimes’ illuminates
the multilayered complexity of borders in contemporary Europe, and why it is that a simplistic understanding of the UK–Ireland border is dangerously inadequate. Our analysis builds upon our academic and policy research work on Brexit and the Irish land border in which we have been engaged since the 2016 UK Referendum on leaving the EU.

**Popular Discourses of Borders as Sites of Sovereignty and Barriers to Mobility**

Contemporary border studies understand and describe borders not in terms of barriers but in terms of mobilities across borders (Pickering and Weber 2006; Mountz, Coddington and Catania 2012; Richardson 2013). Kolossov and Scott (2013, 7), for instance, write:

> While state-centredness remains an important way of conceptualizing borders and their significance (…) the world is increasingly composed of relational networks rather than only fixed spaces (…) fluidity of movement along global networks, takes little account of fixed borders.

Within this context of increasing flows (not least in terms of digital communications and financial transactions), Latham (2014) conceives borders as ‘striking sites’ where bodies, mobility and information intersect. Public attention on this intersection is often preoccupied with how the movement of people across state borders is governed.

The pro-Brexit movement in the UK was but one manifestation of an increasing tendency for populist rhetoric on ‘stronger borders’ to find fertile soil in the mainstream media and political parties. In a European context, official, public and media discourses on the pan-European ‘migration crisis’ appeared to reach new heights in 2015, after a period of particularly intense conflict and refugee flight from Syria. These discourses reflect stark assumptions in the public mind that the purpose of ‘borders’ is to constrain ‘mobility’ – and that failure to do so poses a risk to state cohesion and security. While the migration crisis is broadly viewed as both a practical and humanitarian problem, media discourses tended to focus on the points where the mobility of people is managed, controlled and restricted (including at border fences, sea ports, deportation centres) as a means of illustrating ‘a crisis of sovereignty’ in the modern nation-state. In the UK, the June 2016 referendum to leave the EU could be interpreted as the manifestation of this same sense of sovereign impotence, exacerbated by concerns about the inability to take single-handed decisions on erecting borders; indeed, it was dubbed as a ‘by-election on immigration’ (ITV 2016; Travis 2016).

Borrowing McCall’s (2013, 2) words from a different context, public opinion on EU membership (and Brexit) was thus shaped by:
responses to features of ‘dark’ globalization – ‘global terrorism’ and illegal migration – and resulting discourses of threat and insecurity, which have turned the page in political, media and academic understandings of state borders.

‘Borders’, in such rhetoric, are lines of defence and distinction between what ‘belongs’ and what is ‘foreign’. The fact that such discourses rely on a clear sense of ‘the other’ and the ‘external threat’ is evident in the ways in which British discourses about hardening borders were, up until recently, almost entirely blind to the existence of the UK’s land border with the Republic of Ireland, with whom it joined the then-EEC in 1973. Brexit – the process of the UK’s exit from the EU – was envisaged by Leave campaigners as an exercise in separation and selective treatment of different types of flows. The Brexit debate and problématique is thus quite clearly one not of EU per se but of national sovereignty. National sovereignty ‘presumes and justifies an alignment between territory, identity and political communities’: an alignment that literally comes together at the borders of the state (Kolossov and Scott 2013, 6). However, as any borders scholar will point out: it is not that simple. The greater the flow of goods and trade in services, the greater the need for people to be mobile too.

**Multiperspectival Analyses of Borders**

State borders are, fundamentally, traversable frontiers – even the most inaccessible and autocratic countries allow for some entry/exit. Rather than in their overall ‘impenetrability’, the power of a state’s borders can be best seen in the enforcement of differential treatment *within* the jurisdiction of the state. As such, borders should be conceptualized as ‘practices … situated and constituted in the specificity of political negotiations as well as in the everyday life performance of them’ (Andersen and Sandberg 2012, 6). Such approaches elucidate borders, and European borders in particular, as ‘not a static, geographical phenomenon, but [a] dynamic [one], consisting of political power, technological practices and knowledge-production’ (Lemberg-Pedersen 2012, 36). Understanding the UK–Ireland border as both an edge and a fissure in such a dynamic and multilayered process presents a fascinating case study because it demonstrates the entanglements and contradictions in the ways in which different groups are treated within these islands of Britain and Ireland.

In this article, we build upon Rumford’s (2012) ‘multiperspectival’ approach to understanding borders. Such an approach effectively espouses both the ‘practice’ and ‘mobility’ turns in border studies. Its main propositions centre on the idea that borders are produced and ‘performed’ through a multiplicity of border practices and ‘borderwork’ (Rumford 2006). Borders, in other words, ‘are not pregiven but [are] rather to be seen as effects of the
practices through which they are made’ (Andersen and Sandberg 2012, 3). Second, Rumford claims that bordering processes happen at and away from borderlines, and are enacted through the work of political and social institutions (e.g. parliaments, central and local governments, civil society organizations), the bureaucratic practices associated with these, and the application of different legislation and policies (e.g. on citizens’ rights, immigration or trade) at various points within and without a state’s territory. Third comes the recognition that, to be effective, borders do not have to be either consensual, visible or constructed by state and political actors. Institutions outside the domain of formal political authority, as well as ordinary people, also construct borders through mundane social practices, forms of cultural representation, symbolism and emotion. As such, borders are mobile and diffused since they can be found ‘in every instance when/where a legal, political or socio-cultural regulation is applied to different types of flows’ (Johnson et al. 2011, 64). Needless to say, however, the functions, the effectiveness and the effects of borders at these different levels of production will vary.

Much of this understanding of borders is encoded in the notion of ‘borderscapes’ (Dell’Agnese and Amilhat Szary 2015), which Brambilla (2015, 19) interprets as expressing:

the spatial and conceptual complexity of the border as a space that is not static but fluid and shifting; established and at the same time continuously traversed by a number of bodies, discourses, practices, and relationships that highlight endless definitions and shifts in definition between inside and outside, citizens and foreigners, hosts and guests across state, regional, racial, and other symbolic boundaries.

Elsewhere, the concept of ‘borderscapes’ is referred to by those studying the dynamics of European borders as ‘multidimensional abstractions’ of knowledge, practice and technologies which capture the dynamic nature of European border control as shaped by political and administrative processes (Lemberg-Pedersen 2012, 35).

Whilst embracing the shared ‘multiperspectival’ and ‘borderscapes’ proposition that borders cannot be properly understood from a single perspective, we want to zoom more precisely on the politico-legal and policy-produced order of borders. To do so, we borrow Berg and Ehin’s (2006, 54) concept of ‘border regime’ defined by the authors ‘as a system of control, regulating behaviour at the borders’; we understand, however, that such border regimes also control behaviour far removed from the borderline itself. Berg and Ehin’s conceptualization of ‘border regime’ is clearly foregrounded by the process of EU enlargement in the early 2000s. However, their understanding of the concept as the outcome of complex intersecting policy and political practices ‘reflecting interests, perceptions, norms, structures and
procedures at various levels of authority (supranational, national, local) and in different policy sectors (2006, 53) lends us the analytical tool for understanding the unprecedented case of withdrawal from the EU, discussed in this article.

For the purposes of this discussion, we define ‘border regimes’ as particular constellations of knowledge and (technologically assisted, spatially situated) practices which constitute the politico-legal and administrative order in border production and management. Specifically, we are interested in how the legal and policy regimes which have constituted the Irish border historically will change through the process of Brexit. If we understand Brexit in this light – not as building a barrier between the UK and Ireland – but as instigating a change in, and a different relationship between, the border regimes that apply in both jurisdictions we can appreciate the potential damage caused to movement across the border.

**Key Features of ‘Border Regimes’: Functions, Governance, Openness**

Berg and Ehin (2006, 55) identify three consistent and important characteristics (dimensions) of a border regime, equally applicable to the EU internal and external borders: (i) the functions attributed to it; (ii) the mode of governance associated with border management (including division of competences among various levels of authority); and (iii) its degree of openness. We can expand these out to consider more broadly the nature of any particular border regime, allowing for the overlapping of operational and normative purposes of borders themselves.

First, in terms of the functions of a border regime, the process of ‘permissibility’ or permeability is critical: what can cross the border freely and where there are restrictions. The concept of mobility, (and the associated notion of ‘flows’) understood as the relationship between ‘the spatiality of social life’ and forms of ‘actual and imagined movement’ (Sheller and Urry 2006, 8; Cresswell 2011), is useful here. We can think about mobility in very wide terms, such as to include, for example, flows of people, objects, animals, interaction, digital data and economic transactions. The ‘four freedoms of movement’ in the EU encapsulate four different types of flows. There is a fifth flow that, as suggested by Latham (2014) and more recently by some within the EU institutions, is very important: that of information. Communication technologies demonstrate that border crossings of information need no longer have any physical manifestation. Therefore, this area is one of growing threat to the security of border regimes (as seen in the Wikileaks releases, for example).

A critical manifestation of the function of a border regime can be seen in the question of citizenship. At a very crude level, citizenship demarcates who is foreign; and what rules separate ‘us’ from ‘them’. More generally, citizenship is
fundamentally about core human social needs of belonging, acceptability and connectivity. This is a live area of debate in relation to immigration – a phenomenon that has been taken as the driver of major change to the external border regime discourses and practices in the EU, especially since its enlargement in the early 2000s. As Barbero (2012) argues, citizenship ‘has become a set of guidelines, discourses, practices and policies for the governance of migration’. Through these guidelines ‘neoliberal globalization liberalizes the free movement of citizens and ‘westernized’ foreign persons while deploying technologies of citizenship and border control against [those] regarded as eternal outsiders, or even aliens’ (Barbero 2012, 751).

This relates to the second element of a border regime, i.e. that of a mode of governance. The broad concept of governance refers to the ‘self-organized steering of multiple agencies, institutions, and systems that are operationally autonomous from one another yet structurally coupled due to their mutual interdependence’ (Jessop 1998, 29). It encapsulates the manifestation of power, law, rights, regulations, and public institutions and administration at work to make manifest the divisions and distinctions that the border represents. This need not only be state power, but it can be power divested down from the state (for example, to a private corporation to enact the border regime) or released up by the state (for example, to a collective transnational agency, such as Europol). More specifically, Monar (2011) describes modes of governance as ‘the different types of instruments (legislative or non-legislative) used for steering and coordination of interdependent actors through institution-based internal rules systems’. These rules systems can be legally binding or maintained through collective target-setting. Either way, a border regime relies heavily on the interdependence of actors and on their coordination via various means. Rumford (2006) makes the crucial point that the EU as a ‘network state’ connects different levels of governance ‘in a novel non-territorial arrangement’; denial of access to that network – not just denial of access to the territory of the EU – is, he argues, ‘a formidable form of bordering’.

Finally, the degree of openness is essential to defining any border regime at any one time. Security is of paramount concern in this respect, not least because the ability to enforce the ‘permissibility’ or otherwise of crossing a border is essential to the integrity of a border regime. Securitization has been an important aspect of the European border regime in response to both the momentum of the integration process itself in the 1980s and 1990s (Van Munster 2009) and the perceived threats to internal stability and security arising from the flows of people. The very existence of border regimes depends on their ability to police flows at the edge of, and throughout, the territory of a state. Different rules of movement and the associated entitlements may apply across different categories of people, goods and services – the hierarchies within such regimes are enormously complicated (Faist 2013).
Inconsistency and Variation in the EU External Border Regime

Building on the above understanding of the key features of border regimes, Berg and Ehin (2006, 53) reflect on the multilevel and complex nature of the functions, governance and permeability of the EU external border regime. They conceptualize it as:

a composite policy [...] shaped by policy-making across [...] diverse areas [in which] different policy paradigms [...] prescribe different modes of governance and diverse patterns of openness and control.

The resulting fragmented policy process manifests ‘in a differentiated and uneven border strategy’ (Berg and Ehin 2006, 53). Furthermore, the weakly coordinated and incoherent process of allocating funding for migration and cooperation policies at the external edge of Europe reflects a wide array of social and political struggles (Den Hertog 2016). Although the enhancement of the European border security policy has developed at a rapid pace since 2015 – especially in the field of shared IT systems and databases, and common means of response, e.g. the European Border and Coast Guard Agency – it appears that national policies still determine the specific effect and shape of EU directives in relation to border security. This relates to the diverging immigration rules, ideological use of the concept of border security and participative structures of governance in each member-state (see, Celata and Coletti 2015; Müller 2014). The often conflicting internal logics of the policies and practices shaping the external European border regime are manifest in the varied controls exercised over different types of flows.

This is seen in the fact that the free movement of citizens to work was restricted for most accession countries – which indicates, as O’Neill (1991) comments, that the dismantling of immigration laws is much more difficult than the dismantling of barriers to trade. It also shows that the permeability of borders depends primarily on the will of member-states, and the fear of immigration is perhaps the strongest incentive for hardening borders. In this process, notions of mobility and security intersect, albeit complexly, as exemplified in the rhetoric regarding ‘facilitating business mobility, securing tourist mobility, or blocking illegal mobility’ (Vukov and Sheller 2013, 229).

As a response to the ‘migration crisis’, the EU’s border-governing approach has taken a more obvious turn to treating different types of movement differently. Hierarchies of movement that had been establishing within the increasingly securitized and externalized EU border policies for more than a decade (Huysmans 2006; Van Munster 2009) were further consolidated in the development of the ‘security union’ in this context. The legitimating discourse for these security measures was concerned with hardening the external borders of the EU in order to preserve the particular openness of the market within. On the one hand, such a mode of governing borders is
supported by ‘a heightened and militarized set of muscular enforcement measures at Europe’s southern and eastern borders coordinated through such agencies as Frontex’ (Vukov and Sheller 2013, 230). Geographers, political scientists and sociologists alike have stressed that one part of such bordering practices stretches far beyond the external spatial borders of the EU, and includes

the creation of ‘buffer zones’, of ‘smart borders’ able to ‘filter’ rather than simply block out flows of people and goods, and the increasing use of military technologies for border enforcement, as well as ‘layered’ border inspection/policing approaches that move customs and immigration inspection activities away from the actual territorial border (Bialasiewicz 2012, 844).

On the other hand, it is crucial to note that border regimes are not just performed at or away from a territory’s edge but also within the territory of the state through the ‘expansion of data-gathering and surveillance’ which deepen the effects of a border regime throughout its jurisdiction (Vukov and Sheller 2013, 231). Across Europe,

all routes of regional infrastructure, such as train connections [...], major urban metro stations, overland bus stations, inter-state highways, and public city plazas, are now [...] subject to intensified border enforcement (Euskirchen, Lebuhn and Ray 2007, 3).

For such reasons, Euskirchen, Lebuhn and Ray claim that the polarized notions of European borders – as either ‘porous’ or ‘Fortress’ like – are analytically weak because they conceive of the border as a territorial demarcation between two political entities. Instead, the EU itself has generated new forces for bordering, with ‘new institutions, actors, rules and techniques’ that act as means of constraint on the mobility of people within and into its territorial area.

All the above have resulted in the EU’s border practices being described as ‘fluid’, ‘loose’ and even ‘virtual’, ‘since there appears to be ‘no there’; no single institution, no single set of actors that can be identified as the bordering ‘State’” (Bialasiewicz 2012, 845).

Another thing which is important to consider is that much of the ground-level EU border policy is flexible and customized for each member-state’s conditions. The growing trend towards a hardening of borders with respect to the movement of people within the EU (as well as between EU member-states and their non-EU neighbours) has not weakened the sovereignty of member-states in determining their border controls. Again, Berg and Ehin (2006, 66) point out that ‘[p]airs of countries, including Estonia and Russia, Romania and Moldova and Spain and Morocco, have each invented ways to provide for greater openness of the border than the acquis envisions’. The European Neighbourhood Policy allows for conditions within which the countries concerned can decide how to interpret the function of the EU external border in a way that gives them flexibility to govern and control
their borders (Celata and Coletti 2015). As a result, ‘diverse implementation practices and specific national arrangements continue to produce differentiated outcomes [where] stretches of the external border [are] marked by varying degrees of openness’ (Berg and Ehin 2006, 67).

In sum, differentiation and variation characterize the EU’s external border. The existing diversity of the EU neighbourhood context, as well as the associated ‘tailor-made’ measures and bilateral initiatives that constitute border governance, is therefore important to consider in the context of the re/emerging UK–Ireland border after Brexit.

In the remainder of this article, we turn to our case study. In the following section, we outline the historical constitution of the Irish border through a series of crisscrossing border regimes, i.e. different systems of rules and practices that define and regulate its functions, its governance and its degree of openness. Specifically, we discuss the Common Travel Area (CTA), EU membership and the GFA as such border regimes. Both the historical and socio-political background to the development of these border regimes, and their gradually produced and complexly overlapping working and effects explain the uniqueness of the Irish case and make a compelling argument for the need to adopt another ‘tailor made’ approach to the UK–Ireland land border post-Brexit – a matter that we address in the last section of this article. We base our analysis on past and ongoing research work, conducted in the period since the 2016 Referendum, for a number of projects and organizations, including the Borders in Globalization international research project (funded by the Canadian Social Sciences and Humanities Research Council), the Centre for International Borders Research (Queen’s University Belfast) and the Centre for Cross Border Studies (Armagh). This work has included: reviews of the academic literature, media coverage of Brexit and the question of the UK–Ireland land border, policy and position papers (published by each of the EU, the UK and the Irish governments), analysis of academics’ and practitioners’ oral and written evidence given to the House of Commons’ Northern Ireland Affairs Committee, and a series of policy and academic seminars on Brexit and the future of the border which we have co-organized and participated in.

Border Regimes Defining the UK–Ireland Border

The meandering UK–Ireland 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 UK. The island was first divided into two separate jurisdictions by The Government of Ireland Act (1920) which envisaged partition as an internal UK matter and as a temporary answer to the thorny question of contested sovereignty across the island. However, 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 border. 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.

Overall, relations between the two parts of Ireland in the twentieth century were characterized by ‘back to back’ development, with each jurisdiction acting in almost wilful ignorance of the effects of its policies and laws on the other. With the start of ‘the troubles’ at the end of the 1960s, divergence between the two sides of the border became manifest in the militarization and securitization of the entire border region in response to the rise of violent conflict concentrated in Northern Ireland. This process was the clearest demonstration of the conflict and division represented by the border. Within Northern Ireland, the border, in the experience of local unionist and nationalist communities, was defined and governed through mutual estrangement, suspicion, fear and instances of violence effectively translating into immobility. Still, three major legal and policy developments that we understand as forming the border regimes constituting the UK–Ireland border of today have stood at odds with the above-described understanding and operation of the border as a line of separation.

**The Common Travel Area (CTA) as a Border Regime**

The first of those border regimes is the CTA, which was originally created in 1922 with the establishment of the Irish Free State, reflecting a mutual understanding (if not formal agreement) between the British and Irish governments of the need to minimize disruption to the movement of people between these islands. On the one hand, it is fundamentally a set of rules and practices that reduce the need for passport controls for travel between the UK and Ireland. At another level, however, the CTA places the UK, Ireland and the Crown Dependencies together in a border regime that sees hierarchical treatment of British and Irish citizens in comparison to others (including EU). This means that British and Irish citizens are free to ‘move between the two jurisdictions, and thereby reside and work in either jurisdiction, without the need for special permission’ (ROI Government 2017, 2).

This is important as it demonstrates how a border regime can regulate movement (not so much as a technical process but in its wider relationship to residence, labour market and place) through the differential definition and application of citizens’ rights within the jurisdiction of a state. Even more pertinent, as the CTA has enabled Irish nationalists in Northern Ireland to avail of many British citizenship rights without having to claim British
citizenship, it shows that in cases of contested sovereignty, a border regime can act as a form of conflict management. The CTA has thus created a degree of openness to the border, especially where the movement of British and Irish citizens is concerned. In principle, this movement is not subject to passport checks, but in practice, due to the security situation created by ‘the troubles’, security checks and close monitoring of movement were regularly experienced by travellers between these islands until the peace process of the late 1990s.

The regime of the CTA is the reason why the UK and Ireland are outside the Schengen Zone – the European equivalent of a border control-free area. The UK decided not to enter the Schengen Agreement when it was first created in 1985 and has remained outside the core developments of it since. The UK’s self-exclusion from the initiative was as a result of its wariness of lifting all border checks for other EU citizens (Wiener 1999). Its embroilment in the CTA (and the associated implications for border crossings) meant that the Republic of Ireland had little choice but to also opt out of Schengen. One of the primary motivations for choosing to align with the CTA rather than with Schengen was the desire to avoid the imposition of passport checks at the Irish border.

The Border Regime Associated with European Union Membership

Secondly, the UK and Ireland have been part of a common border regime within the EEC since 1973 and within the EU since 1993. This was reflected in abolishing barriers to trade (e.g. to the mobility of goods, services and capital) at the UK–Ireland land border and, more broadly, in the two countries’ shared subscription to the acquis communautaire representing a discourse of borders as enablers, rather than as barriers to movement. As a result, and crucially for present–day debates over the effects of Brexit on the UK–Ireland border, customs checks between Britain and Ireland, and between Northern Ireland and the Republic of Ireland were removed since the early 1990s, thus effecting a further degree of openness of the border. Hayward, Komarova and Butazzoni (2016) point to the importance of common EU membership for facilitating, at least in some sectors, advanced market integration, some policy integration, networks and collaboration across the UK–Ireland border.

Participation in the common EU border regime has gone a long way to improve bilateral relations between the Irish and UK governments, as well as between the Irish government and the Northern Ireland devolved administration. As such, it has shaped the peace process on the island in practical and symbolic terms, as well as in terms of rights and entitlements. This has meant the following for the Irish border: strong scope for shared governance over issues of mutual concern (including those that are best addressed at the supranational level); freedom of movement (customs free,
visa free) for services, goods, capital and people; common citizenship as members of the EU by virtue of being national citizens of an EU member-state; and some co-operation for security (primarily in terms of information sharing).

**The 1998 Good Friday (Belfast) Agreement (GFA) as a Border Regime**

Another all-island border regime was created by the 1998 GFA. A critical aspect of the Agreement is its definition of citizenship and sovereignty as it recognizes ‘the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both’ and ‘their right to hold both British and Irish citizenship’ (The Belfast Agreement 1998, 4). The Agreement also affirms ‘the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status’ either as part of ‘the Union with Great Britain or a sovereign united Ireland’ (GFA, 3). No change to the status of Northern Ireland can thus occur without a majority referendum vote on both sides of the border.

In addition, the Agreement has formalized north/south and east/west (i.e. between Northern Ireland as a constituent part of the UK and Great Britain) institutional governance, and enabled all-island cooperation in specific sectors (e.g. waterways, food safety). When, after the signing of the GFA, security checks at the border also ceased, the UK—Ireland land border all but disappeared from view – a fact of weighty symbolic importance, particularly cherished by Irish nationalists and one which has meant that the legacy of fear, suspicion and restricted mobility in and around the border region, resulting largely from ‘the troubles’, has been given the chance of transformation. The GFA has thus cemented the openness of the border not only symbolically and politically but also socially.

Finally, within the 1998 Agreement, of no small significance is the fact that there is a border regime that sees differential experience within the UK itself. Northern Ireland has competency on different devolved matters compared to Scotland and different legal, policy and governance environments between Northern Ireland and the other regions in the UK have significant implications for a post-Brexit scenario, especially considering that many policy areas currently decided by the EU may, post-Brexit, well fall under the rubric of devolved competence (e.g. agriculture, environment, trade).

**The Implications of Brexit for the Border Regimes on the Island of Ireland**

It is essential to emphasize that the present-day functions, governance and degree of openness of the UK–Ireland border is a result of the historical overlaying of the different border regimes introduced above. Its apparent
invisibility and openness is much cherished not only by Irish nationalists but is also defended by pro-Brexit unionist politicians in Northern Ireland. All this considered, the challenge of adjusting the differing border regimes that meet at the UK–Ireland land border once the UK leaves the EU is quite enormous. At the very minimum, it inevitably affects and entails the Irish state and the EU as well as the UK itself. An equally complex aspect of the task is the relational nature of the different types of flows that border regimes manage. Overall, the balance between differently functioning and governed border regimes is going to be disturbed by one state leaving the EU, with particular implications for the kind of border management and control that each regime maintains. The final part of our article considers these implications.

**Avoiding a Hard Border**

It is worth noting here that while in June 2016 the UK as a whole voted to leave the EU (with 53% voting Leave and 47% voting Remain), the majority vote in each Scotland (62% Remain and 38% Leave) and in Northern Ireland (56% Remain and 44% Leave) was in favour of remaining part of the EU (The Electoral Commission 2016). Crucially for our case study, while the vote in Northern Ireland largely aligned with ‘ethno-national’ identifications and the associated constitutional preferences, it did not do so unequivocally. In the analysis of Garry (2016, 3) ‘Catholics overwhelmingly voted to stay by a proportion of 85 to 15 while Protestants voted to leave by a proportion of 60 to 40. Similarly, two thirds of self-described ‘unionists’ voted to leave while almost 90 percent of self-described ‘nationalists’ voted to remain’. Thus, it must be borne in mind that neither Brexit nor the possibility of a hard border on the island of Ireland as a result of Brexit (particularly in a scenario where the UK exits from each of the Single European Market and the customs union)10 enjoys popular legitimacy in the region. It is notable that even politicians in Northern Ireland most in favour of the UK’s exit from the EU – specifically, the Democratic Unionist Party (DUP) on whose votes in Westminster the present minority Conservative government is vitally dependent – do not wish to see a hardening of the border between the two parts of the island (DUP 2017; Hayward and Whitten 2018).

In recognition of the critical economic, political, symbolic and practical importance of the ‘invisible and open’ (HM Government 2017a, 3) Irish border, all parties to the Brexit negotiations have repeatedly stated and agreed on the view, first articulated by the European Council (2017, 6), that ‘the unique circumstances on the island of Ireland’ require ‘flexible and imaginative solutions…, including with the aim of avoiding a hard border’. In turn, the UK government, have called for ‘devising new border arrangements [that] respect the strong desire… to avoid any return to a hard
Yet, while ‘all have requested that the specific needs of Northern Ireland (particularly arising from the land border) be addressed in the withdrawal process’ (Phinnemore and Hayward 2017, 7), the political difficulty hinges on differing views regarding how this task can be achieved (Murphy 2018). The Irish state has stressed that the answer to this question lies either in the UK remaining in both the single market and the customs union or in agreeing on a special arrangement for Northern Ireland that would effectively retain its membership in the single market and customs union (Connelly 2018). The UK government on the other hand (vociferously urged by the DUP) has been firm in rejecting both of these suggestions, the latter on grounds of being potentially threatening to the constitutional and economic integrity of the UK itself. Key to a UK–EU agreement on the future of the UK–Ireland border is thus not simply the question of how closely aligned Northern Ireland’s trade-associated regulations will be with those of the Republic of Ireland and the rest of the EU, (in order to avoid a ‘hard’ border for goods) but the fact that trade regulation alignment itself is intricately interwoven with the devolutional, legal and other regulations pertaining to citizenship and the movement of people, all issues which are highly politically charged in the UK domestic context.

Specifically, the problem that has emerged is the UK’s desire to restrict the movement of non-Irish and non-UK citizens across the Irish border, while remaining close to the status quo with regard to its openness to other types of flows (goods, services, capital). While the disentanglement of different forms of regulation has variously been referred to as ‘squaring the peg’ or ‘magical thinking’, the approach to it taken by the UK government can be discerned in a series of position papers published in the summer of 2017. Even if the UK government’s position paper on Northern Ireland and Ireland remains rather vague on the detail, what it makes clear is an underlying understanding that movement across the Irish border will be managed not through checks at the point of entry but in terms of rights and entitlements enjoyed once within the jurisdiction of the state. As the government explains:

immigration controls are not, and never have been, solely about the ability to prevent and control entry at the UK’s physical border. Along with many other Member States, controlling access to the labour market and social security have long formed an integral part of the UK’s immigration system (2017, 11).

Such point-of-contact controls can entail landlords, doctors, university lecturers, employers, bank workers performing checks on individuals to see whether they are ‘legally’ resident/working/accessing provisions in the country. At the moment, they are used to check on the status of non-EU citizens;
after Brexit, the range and frequency of such checks can be expected to increase exponentially, and the work of ordinary citizens as ‘border guards’ of the UK’s border regime – to become increasingly normalized (Rumford 2009; Vaughan-Williams 2008; Weber 2006; Wemyss, Yuval-Davis and Cassidy 2017).

Any immigration controls at points of contact would centre upon the ability to distinguish between British and Irish citizens, other EU citizens and those from outside the European Economic Area. Such measures would seek to protect the special status of British and Irish citizens in these islands, while avoiding the imposition of constraints on the movement of people across the Irish border.

**Maintaining the Common Travel Area and Associated Rights**

That Irish citizens are subject to immigration controls in the UK has been obscured both by EU freedom of movement of labour and by CTA arrangements (as per 1972 Immigration Order, which only deals with entry from the ROI). In fact, border controls already vary among the members of the CTA (Ireland, the UK and the Crown Dependencies) and across different types of borders be they land, sea or air. Since the late 1990s, immigration officers in Irish ports have had the capacity to examine the identity documents of travellers from elsewhere in the CTA. This takes the form of fixed controls at air and sea ports and targeted controls along the Irish border. It is a tactic that means passengers are more conscious that they are being scrutinized, although their freedom of movement is not restricted. Thus, although the UK government refers to the CTA as ‘a special border-free zone’ (HM Government 2017a, 7), it is not always experienced as such and, that it can be, depends on a system of legal rules and practices that extend far beyond the borderline, applying throughout the territories of each of the UK and Ireland. It has been suggested, in this respect, that since ‘most economic and social entitlements of Irish citizens in the UK currently arise from their position as EU citizens’, the continuation of a special status for Irish citizens in the UK after Brexit will not be automatic. Instead, there will be a need to ensure this status by revising current CTA legislation, amending the Immigration Act of 1971, and introducing further legislation to protect the social and economic rights of Irish citizens (de Mars et al. 2017; Ryan 2016).13

Originally, the ‘non-foreign’ status of Irish citizens in the UK was to give them the same status as those from the Commonwealth states. Such rights have since, of course, been dramatically enhanced by EU membership (particularly in relation to economic and social rights). After Brexit, Irish citizens’ status as non-alien will supersede their position as EU citizens in the UK. The
question is how this will be done; much will fall on (a) what counts as evidence of eligibility for these rights and (b) on the status of the CTA, following the conclusion of the Withdrawal negotiations. The advantage Irish citizens currently have over other EU/EEA citizens already centres upon what counts as residency. Residency anywhere within the CTA counts as habitual residency in the UK (e.g. for the purposes of assessing rights relating to non-contributory benefits, or application for settled status).

In practice, there will also need to be clarity on what counts as valid documentation for Irish citizens to prove right to work/reside, etc. At present, this is already different for them compared to other EU citizens, in that (since in the UK, ID cards or passports are not habitually used in order to demonstrate entitlements) Irish citizens can prove their right to work with a birth certificate. In terms of social security, these rules are coordinated rather than harmonized, so there is differentiation already. A particular concern in this regard centres on the rights of cross-border workers, or the obstacles put in the way of cross-border work if there is growing disparity between social security rules north and south of the UK–Ireland border. The question of coordination of social security rules is one thing; the recognition of contributions (e.g. towards pension funds) made elsewhere is another. Again, the status of the territory of the CTA could be vital here, but would have to be carefully negotiated as it would necessitate a significant enhancement of its importance (and some particular concessions by the EU).

Crucially, of course, the CTA does not apply to citizens who are neither Irish nor British, nor does it apply to any other type of movement beyond that of people. The latter is of critical importance and is something yet to be resolved since the freedom of movement of other (non-Irish and non-British) EU citizens will depend on the reciprocal arrangements that negotiators are able to achieve with respect to British citizens in the EU. Having never joined the Schengen Agreement, the UK has continued to operate control of the movement of EU citizens at its airports and sea borders. In practice, however, at present there are no border check points at the UK–Ireland border to control the movement of such citizens between the two jurisdictions on the island. Early indications are that one way to avoid the imposition of such border checks for other (non-Irish) EU citizens is to continue allowing visa-free travel/entry into the UK for a limited period of time while tightening regulations with respect to rights to reside, work and use public services in the country. Thus, much will depend on the future distinction between those EU citizens in the UK with registered residence rights (a certification of which under the name of ‘settled status’ has been proposed by the UK Government (2017)) and those without such status, as well on what the rights guaranteed by such a residence status will be. Another problem arises from the fact that if the Irish border becomes a customs border for the movement of goods (if the UK leaves the single market and custom
union), some restrictions will have to be imposed on the freedom that individuals have to cross the border and purchase goods (or work, offer services or run businesses). It remains unclear how this can be achieved without introducing custom checkpoints and thus additional degrees of friction or visibility to the experience of the border for those crossing it.

Finally, one of the issues concerning citizens’ rights after Brexit, partly but not entirely associated with the future of the CTA, is that of the rights of British citizens in Ireland and Europe. As discussed above, entry into Ireland from Britain/Northern Ireland will continue to rely on reciprocal CTA arrangements. However, difficult questions may arise with respect to the new European Travel Information and Authorisation System being introduced by the EU for all visa-free non-EU arrivals at the Schengen border. This means pre-authorization of entry for non-EU citizens and will surely apply to UK nationals after Brexit. Ireland, however, is not a Schengen country and so this new arrangement should not affect the travel of British citizens between UK and Ireland. This is one example of differential rights and entitlements between British and Irish citizens when it comes to travel outside the CTA. The potential for a growing disparity between Irish and British citizens’ rights and entitlements after Brexit has weighty implications for the population of Northern Ireland – the equality of the two being a fundamental tenet of the Good Friday Agreement (Centre for Cross Border Studies 2017, 2018).

**Conclusion**

Attempts to understand the effects of Brexit on the UK–Ireland border in terms of its future function(s), modes of governance and permeability – particularly for the movement of people – must both take into account the overall EU border regime framework and consider the specificity of British–Irish relations and the particular position of Northern Ireland therein. As discussed, this border can be understood historically as produced by layers of concentric border regimes within and without the British Isles. Irrespective of the gradually diminishing over the past number of years visibility and symbolic significance of the Irish land border as a result of both common British and Irish participation in the single market, customs union and the peace process, it is crucial to remember that the very existence of this border reflects and manifests the enduring *problematique* of state sovereignty. Advances in peacebuilding notwithstanding, at the macro-political level ethno-national conflict in Northern Ireland can still be described as conflict over the very existence and legitimacy of the border. The debates prior to and since the Brexit referendum in both Britain and Northern Ireland demonstrate unequivocally the return and the enduring conflict potential of this crudely narrow definition of state borderline as the bulwark of sovereignty.
The mode of governance that will determine the new border regime’s treatment of different types of movement is, to a degree, beholden to political divisions and interests within Britain and Northern Ireland – divisions that are ultimately structured by the sovereignty question. This will shape not only the substantive definition of Northern Ireland interests vis-à-vis UK’s Brexit negotiations but also the degree and form of representation of these interests.

The debates surrounding Brexit and the very concept of ‘border regime’ tease out the extent to which sovereignty itself is challenged within and without the state. They help to demonstrate the entanglement of different forms of movement and the associated right within and across state jurisdictions, and reveal that borders operate not so much as lines of division but as meeting places and sites of integration and cooperation. Thus, the European border regime, already the result of ‘numerous conflicting interests, principles, and “imaginaries”, mediated through various political representations and procedures’ (Euskirchen, Lebuhn and Ray 2007, 16) is about to undergo yet another transformation. Located at the edge of a new EU external frontier, the implications could not be starker for the conflict-scarred region of Northern Ireland.

Notes

1. These include the free movement of goods, services, capital and workers as part of the European Union’s acquis (enshrined in the 1957 Treaty of Rome). They are not to be confused with the more commonly known outside of Europe four fundamental freedoms (of speech, worship, and from want and fear) proposed by President F. D. Roosevelt in his 1941 State of the Union address.
2. Example of people, goods, services, information or capital.
3. Here, the author discusses Perera’s (2007) use of ‘borderscapes’.
4. For instance, former European Commissioner for Science and Research Janez Potočnik has called for the ‘freedom of knowledge’ (dubbed by some ‘knowledge mobility’) to be achieved with the free movement of data. More recently, Estonia has made the case for the free movement of data in a ‘Vision Paper on the Free Movement of Data – the Fifth Freedom of the European Union’ (2017).
6. As the Ministry of Justice (n.d., 1) explains, ‘The Crown Dependencies are the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man… [They] are not part of the UK but are self-governing dependencies of the Crown. This means they have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The Crown Dependencies are not represented in the UK Parliament’.
7. The fact that the CTA was maintained at the same time as the Anglo-Irish Trade War shows how different types of flows can be treated very differently within a single border regime.
8. Established through the Treaty of Maastricht (1993) and interlinked with the completion of the European single market through the implementation of the Single European Act (1993).
9. Between 1921 and 1972, Northern Ireland was governed through a unionist-dominated local devolved parliament and government. The onset of ‘the troubles’ (1969) and an increasingly fragile political and security climate led to the suspension of local parliament in 1972 (and to its formal abolition in 1973). Thus, for the first 25 years of UK’s and Ireland’s EEC/EU membership, Northern Ireland was governed through direct rule from Westminster. In 1998 the Good Friday (Belfast) Agreement re-established devolution in Northern Ireland. Though the devolved institutions (parliament and government) in the region operated successfully and without interruption between 2007 and 2017, since then regional power sharing has collapsed as a result of a breakdown of relationships between the main political parties.

10. An intention which the UK Prime Minister Theresa May first announced in January 2017.

11. As confirmed by PM Theresa May in her speech in Parliament on 28th February 2018, broadcast by the BBC.

12. Especially since the UK Government has indicated that the country would not remain a member of the EEA.

13. Also, with respect to possible changes to how the CTA regulates the status of British and Irish citizens in each-others’ territories, de Mars et al. (2017, 6) point out that since ‘[t]he main tenet of the CTA is that UK nationals in Ireland are treated as equivalent to Irish nationals in Ireland in almost all respects, and vice versa’, without changes to the CTA post-Brexit, UK citizens would be granted ‘EU-level rights… in an EU-member state’. The authors further suggest that ‘while the EU has no automatic competence over third country migration policy in the Member States who are not party to Schengen… there is no EU Member State that offers nationals from outside the EU a better status in an EU Member State than EU nationals have’. This may be among the reasons why, by contrast to the recurrent (since the EU Referendum in 2016) news coverage of a surge in Irish passport applications by citizens living in Northern Ireland and Britain, there has been very little public discussion of potential migration of UK citizens to Ireland.

14. The ‘Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union’ (on 8th December 2017) states that ‘The UK and EU27 Member States can require persons concerned to apply to obtain a status conferring the rights of residence as provided for by the Withdrawal Agreement and be issued with a residence document attesting to the existence of that right’. In this regard, advocacy groups such as ‘the3million’ (2018) have been extremely critical of the proposed by the UK Government ‘settled status’ (eligibility for which includes 5 years of lawful residence in the UK prior to the date of withdrawal), suggesting that it does not deal with issues such as the aggregation of pensions, healthcare or benefits from EU countries, provides no reciprocity with British citizens in Europe, proposes systematic criminality checks (illegal under EU law), and altogether represents a reduction of status, compared to the presently applying permanent residence.

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