Brexit and Dealing with the Past in Northern Ireland

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Dealing with Northern Ireland's **past** is of fundamental importance to its **future**.

Since 2013, Northern Ireland's main political parties have been involved in painstaking negotiations to develop a comprehensive approach to do this.

These negotiations began because Northern Ireland's past kept disrupting its present. Our society remains deeply divided and these divisions contribute to political instability and civil unrest.

In addition, victims and survivors are still 'struggling' with unmet needs resulting from the conflict. Today, many of the bereaved and those who are responsible for the violence are elderly.

The past's power to disrupt the present is not going to disappear by itself.

It is therefore **urgent** that we find a comprehensive approach that can help Northern Ireland to develop more stable political institutions, to foster reconciliation among its communities, and to meet the needs of victims.

Achieving this requires detailed negotiations and political compromises. However, Brexit is **already undermining** efforts to do this **and** it has the potential to threaten the peace process more broadly.

Brexit, Sovereignty, and Resistance to International Human Rights Norms

The first way in which I believe this is happening relates to the wider political context created by Brexit in which international institutions and norms are juxtaposed against calls for greater national sovereignty.

The Good Friday Agreement was largely silent on addressing the legacy of past violence. In the intervening years, the judgments of the European Court of Human Rights on the UK's obligations to investigate violations of the right to life committed during the Troubles, together with the resulting scrutiny from the Council of Europe, have been an important trigger for pushing the UK into adopting measures to address the legacy of the conflict.

The Stormont House Agreement of 2014, which sets out the most promising and comprehensive approach proposed to date for dealing with legacy issues, commits the main Northern Irish political parties as well as the UK and Irish governments, to ensuring that the proposed measures must be 'human rights compliant'. The case law of the European Court makes clear that to be human rights complaint; institutions to deal with the past must be effective, transparent, and independent.

The European Court of Human Rights has therefore played and should continue to play a positive role in shaping efforts to deal with the past in Northern Ireland.

However, the UK's relationship with Strasbourg has been contentious among some right-wing groups in the UK for several years. These groups object to what they inaccurately describe as a foreign court being able to change UK law and call on the UK to withdraw from the ECHR.

Arguably, this opposition to Strasbourg is part of broader efforts (of questionable validity) to 'reclaim British sovereignty' from regional institutions, which featured so prominently in public debate over Brexit.

Of course, leaving the European Union would not alter the UK's relationship with the European Court of Human Rights. However, it may embolden those seeking to replace the ECHR with a UK Bill of Rights. This could be negative for efforts to deal with the past, as it would remove one source of pressure on the UK government to address the needs of victims. It could weaken or remove a system of safeguards to ensure that mechanisms that are established are adequate to the task.

In recent months, this opposition to international norms has bled directly into efforts to ensure accountability for killings committed during Northern Ireland's conflict.

For example, the House of Commons Defence Committee has just completed an investigation 'To establish the options open to the UK Government to **protect** veterans of "The Troubles", who were involved in **fatal** incidents'.[1] The Committee somewhat erroneously drew parallels between accountability for state violence in Northern Ireland and the largely discredited allegations made against UK armed forces personnel to the Iraq Historic Allegations Team (or IHAT), some committee members argued that the UK's international obligations had contributed to IHAT's failings. Thus, in a hearing on Northern Ireland, they expressed concern about the implications of the UK's membership of the International Criminal Court and the ECHR for investigations into **historic** allegations about the conduct of ex-service personnel. The Committee's report, published yesterday, called on the next government to enact a 'statute of limitation' to prevent prosecutions of members of the armed forces for all Troubles-related incidents. They recommended that a truth-recovery process to provide facts to bereaved families accompany this.

Campaign groups, such as Justice for Veterans, which are also calling for an end to prosecutions go further and call for the UK government to stop the Human Rights Act being used against past and present soldiers.[2]

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[1] http://www.parliament.uk/business/committees/committees-a-z/commons-select/defence-committee/inquiries/parliament-2015/inquiry7/
[2] UK Veterans One Voice, Petition http://ukveterans-onevoice.uk/news%20%26%20more/uk%20veterans%20petition.html

The current calls to protect British service personnel from criminal prosecution do not necessarily reflect the position of the UK government as a whole. Nonetheless, the Ministry of Defence and veterans are powerful lobbies. Their campaign is supported by Northern Ireland's Democratic Unionist Party, which has had an outsized influence over the current government, due to the government's slim majority in the House of Commons.[3]

In a political climate created by Brexit, these campaigners who are seeking to prevent accountability for killings during the Troubles are able to tap into unease about international obligations and debates about patriotism and sovereignty to press their case. If their demands were met, it would make it very difficult to implement the Stormont House Agreement in its current form, as the agreement calls for the creation of a Historical Investigations Unit, which would have the power to refer cases for prosecution.

Brexit as undermining the ongoing political negotiations on legacy

This brings me to my second theme, which relates to the effects of Brexit on the ongoing negotiations to implement the Stormont House Agreement's legacy proposals.

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[3] Scott Gilfilnan, 'A United Ireland is further away than you think', *New Statesman* (12 April 2017) http://www.newstatesman.com/politics/staggers/2017/04/united-ireland-further-away-you-think

Since the Northern Ireland Assembly elections in early March, the main Northern Irish political parties have fitfully been involved in talks. Legacy is an important but challenging issue in these negotiations.

The talks have been hampered by disagreements over the UK government's insistence that the Northern Ireland Secretary of State should be able to veto information being provided to families on the grounds of national security and the perception among the nationalist parties that the Secretary of State is too closely aligned to the DUP to serve as impartial chair in the talks.

The glaring absence of the British Prime Minister in the talks at a time when Northern Ireland is facing the most profound political crisis since the Good Friday Agreement has been interpreted as either a sign of the current government's lack of interest in Northern Ireland *or* as its reluctance to displease Unionist politicians by getting too actively involved.

This situation has been exacerbated by the Brexit-related decision to hold a General Election in early June. Clearly, no progress can be made on the legacy talks while the parties are embroiled in campaigning. As a result, the Secretary of State postponed the deadline for forming a new Executive until late June. As many contentious Orange marches take place in July, this may not be an opportune moment for political compromise.

Overall, it seems clear that for the British government, ensuring that it can pursue its Brexit objectives takes priority over ensuring the stability of Northern Ireland's devolved political institutions. Progress on dealing with the past is likely even further down the government's list of priorities.

This takes me to the third and final theme, the impact of Brexit on the stability of the peace process.

Brexit, the Border and the Fragile Peace

Efforts to deal with the past in Northern Ireland are intended not just to meet the needs of victims, but also to help society transition towards **peace** and **stable** democratic government. If Brexit complicates efforts to address the legacy of past violence, it can undermine these objectives. Furthermore, the implications of Brexit for the border with Ireland may threaten the delicate balance of our peace process more fundamentally.

At its heart, the Northern Irish conflict was about whether the region should be part of the United Kingdom or the Irish republic. The Good Friday Agreement blurred this issue by ensuring that both governments have a role in Northern Ireland, both national identities should enjoy 'parity of esteem', and by making the border between the two countries largely invisible, which allowed for much greater political, economic, social and cultural integration across the island. If Brexit results in a hardening of the border, it will undermine these efforts.

Given the likelihood of Brexit to impact on the relationship of Northern Ireland to the rest of the island, it is unsurprising that the referendum results in the region were shaped by national identity. Nationalist areas voted strongly to remain in the EU.[4] Majority Unionist areas were more evenly divided, but mainly voted in favour of withdrawal.[5]

The responses of the political parties to the referendum have similarly been divided along lines of national identity.

Since the referendum, Sinn Féin repeatedly called for a referendum on a united Ireland. In the past, Irish nationalism would have been the primary focus of such a referendum. However, if a poll were held in the future, the question of whether Northern Ireland should remain in the EU would be a decisive factor.[6] Brexit could also further influence the outcome of a border poll if it appeared that the Scotland was leaving the UK and that English nationalism was becoming a stronger force in the remainder of Britain.[7]

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[4] Jonathan Tonge, The Impact and Consequences of Brexit for Northern Ireland, European Parliament Briefing http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583116/IPOL_BRI(2017)583116_EN.pdf
[5] Jonathan Tonge, The Impact and Consequences of Brexit for Northern Ireland, European Parliament Briefing http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583116/IPOL_BRI(2017)583116_EN.pdf
[6] Daniel Boffey, 'Irish Leader calls for a United Ireland Provision in Brexit Deal', *The Irish Times* (23 February 2017) https://www.theguardian.com/politics/2017/feb/23/irish-leader-enda-kenny-calls-for-united-ireland-provision-in-brexit-deal
[7] Alex Kane, 'Brexit challenges the identity of Ulster unionism', *The Irish Times* (14 April 2017) https://www.irishtimes.com/opinion/brexit-challenges-the-identity-of-ulster-unionism-1.3047791?mode=amp

The Unionist parties have rejected the call for a border poll.[8] However, some Unionist voices have argued that Brexit poses a profound challenge to Unionist identity and have called upon the Unionism to strategise about how they should respond to a united Ireland.[9] This position argues that Brexit and demographic shifts make Irish unification more likely. If this were to happen, the question would be whether Unionists and Loyalists would respond peacefully or whether they would engage in militant resistance.

The re-imposition of a 'hard' border could also trigger violent resistance among republican dissidents who could point to the checkpoints as a sign that the Good Friday Agreement was being undermined.[10]

Irish government officials and the European Council's draft negotiation guidelines have highlighted the risks Brexit poses to the peace process and have asserted their commitment to ensuring its stability.[11] In contrast, the UK government's white paper on exiting the EU contained no reference to the Northern Ireland peace process. This omission is deeply worrying.

Conclusion

To conclude, next year Northern Ireland will mark the 50th anniversary of the start of the Troubles. Killings committed in the early years of the conflict

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[8] Gareth McKeown, 'Are we any closer to a border poll', *Irish News* (11 March 2017)
http://www.irishnews.com/news/2017/03/11/news/are-we-any-closer-to-a-border-poll--960596/
[9] BBC Talkback, 'Unionism should embrace a United Ireland says former PUP press officer',
http://www.bbc.co.uk/programmes/p04zw8hy
[10] Exiting the EU Committee, The Government's Negotiating Objectives: A White Paper, para 112
[11] European Council, Draft guidelines following the United Kingdom's notification under Article 50 TEU (31 March 2017), para 11.

have still not been properly investigated. Victims are still waiting to have answers. Contested versions of the causes of the conflict and the responsibility of perpetrators are still a fault line running through Northern Irish society. We are now almost two decades into our peace process, but tensions over Northern Ireland's past continue to disrupt our political institutions and undermine reconciliation.

The Stormont House Agreement proposals offer the best chance to address these challenges and meet the needs of victims. However, Brexit is undermining efforts to do this by causing Northern Irish concerns to fall down the UK government's list of priorities; by providing another fault line in communal identity in Northern Ireland; and by contributing to a climate where national sovereignty may be privileged over international norms among some policymakers.