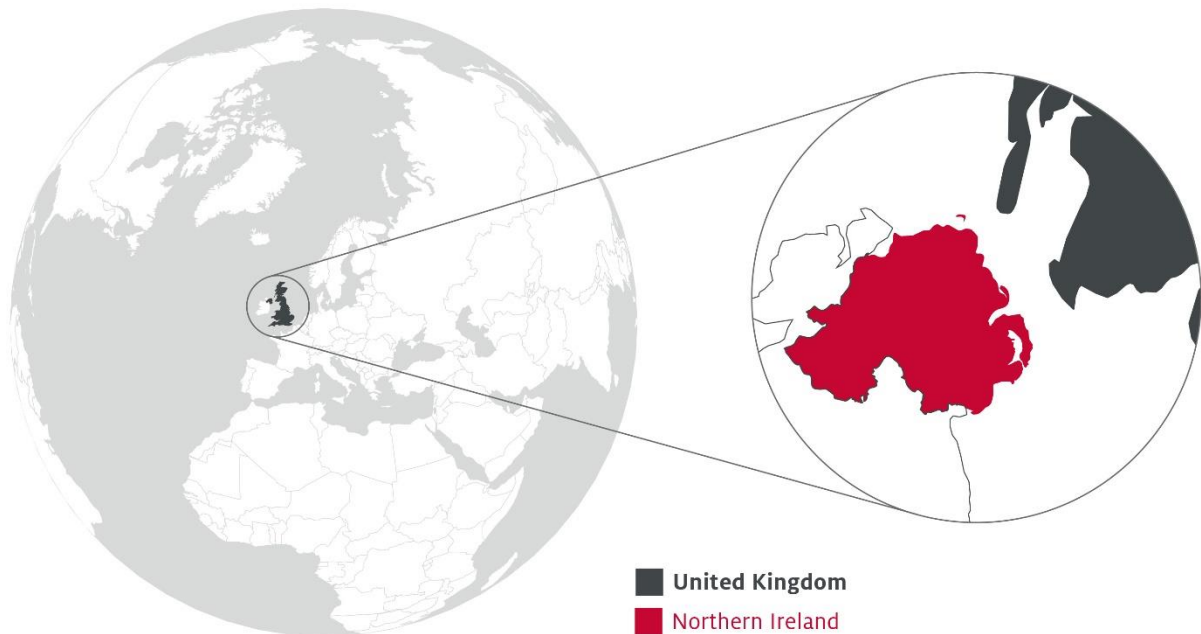




Between the Good Friday Agreement and Brexit: Old and New Challenges to Autonomy in Northern Ireland

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1. Essential Facts and Figures

Northern Ireland comprises six historical counties in the northeast of the island of Ireland. The entity came into being when the predominantly Protestant population of the six counties opposed Ireland's independence from the United Kingdom (UK) in 1921. As a result, only 26 counties in the South and West of the island went on to constitute the independent Irish Free State (from 1949, the Republic of Ireland), while Northern Ireland remained a part of the UK.

The border between Northern Ireland and the Free State was deliberately drawn to ensure that the Protestant community of Northern Ireland would constitute a majority of roughly two thirds of the population. The remaining population, like the majority in the Free State, was predominantly Roman Catholic. While there is no perfect correlation between religious denomination and political preferences, there has been a strong link between these two characteristics within the population of Northern Ireland (Mitchell 2006; Coakley 2008): Protestants (of varying denominational backgrounds) have been overwhelmingly in favor of Northern Ireland's union with the UK. Hence, this group is commonly referred to as unionist. Contrastingly, Roman Catholics tend to support Northern Ireland's unification with the Republic of Ireland. Given their support for Irish nationalism, this segment of the population is known as nationalist.

The division of the island under the Government of Ireland Act 1920, led to the establishment of a separate Northern Ireland parliament and an autonomous government for Northern Ireland within the UK (Nash, Reid and Graham 2016, 15f). The status of these autonomous institutions was unique, given the centralized character of the UK state before 1997 – that is, before autonomous institutions for Scotland and Wales were also established (Evans 2020). However, given the dominance of the unionist community in Northern Ireland and the hegemonial status of the Ulster Unionist Party (UUP) within the region's institutions, self-rule for Northern Ireland enabled highly exclusionary policies that marginalized the Catholic minority from numerous spheres of public life. The systematic discrimination of Catholics extended, for instance, to the housing market or the labor market. The education system was also segregated (Tonge 2002, 19ff). UK-wide social policies like the creation of the National Health Service, or reforms in response to the Civil Rights Movement of the late 1960s improved the living standards of the Catholic community in some respects. However, the reforms implemented by the Northern Irish government were considered to be too limited by many Catholics and to be too far-reaching by radical unionists (Bosi 2008). The resulting polarization between nationalists and unionists led to a protracted violent conflict, known as the Troubles. The conflict involved state security forces and paramilitary groups from both communities. More than 3600 people were killed as a direct result of political violence between 1969 and 1998 (Smyth 2006).

The deteriorating security situation in Northern Ireland and the autonomous government's inability to address the underlying societal tensions in the region led the UK government to suspend Northern Ireland's self-rule in 1972. Except for short-lived attempts of restoring autonomous self-rule (known as *devolution* in the UK context), Northern Ireland was under *direct rule* from London between 1972 and 1998. Only with the 1998 Good Friday Agreement (GFA)¹ that created, among other things, mechanisms for power-sharing between unionists and nationalists, large-scale political violence could be brought to an end and territorial autonomy could be restored (Wolff 2001; Tannam 2001).

This paper assesses Northern Ireland's territorial autonomy under the GFA and highlights the successes and challenges of the Agreement's implementation. The paper also addresses new challenges that arise from the UK's withdrawal from the European Union (EU) and Northern Ireland's unique relationship with both the EU and the rest of the UK. These new dynamics have been unfolding against the backdrop of a changing demography, where Northern Ireland's Catholic community is now only marginally smaller than the Protestant community. Additionally, recent opinion polls consistently demonstrate that the largest share of Northern Ireland's inhabitants do no longer identify as either unionist or nationalist. These recent developments make the future of Northern Ireland's autonomous institutions increasingly uncertain.

2. Autonomy and State Structure

The 1998 Good Friday Agreement (GFA) established a range of new institutions for the governance of Northern Ireland. The aim was to redefine the relationships between the conflict parties during the Troubles and other involved actors across three *strands*.

Strand one establishes territorial self-rule for Northern Ireland under the precondition that unionists and nationalists share power in the Northern Ireland Executive. In this sense, the region's territorial autonomy does not serve to give self-government to a territorially concentrated minority group, but to incentivize cooperation and reconciliation between unionists and nationalists within the regional institutions (Walsh 2018, 38). This makes the GFA's autonomy arrangements markedly different from the experience of devolution between 1921 and 1972 (Tannam 2001). The post-1998 consociational settlement is underpinned by proportional representation in the regional legislature, the Northern Ireland Assembly, the proportional allocation of government portfolios in the

¹ The Good Friday Agreement (also known as the Belfast Agreement) was signed by the British and Irish governments on 10 April 1998 and was approved by referendums held in the Republic of Ireland and Northern Ireland on 22 May 1998. The GFA consists of two inter-related agreements: a multi-party agreement between Northern Ireland's political parties (known as the Multi-Party Agreement) and an international agreement between the governments of the UK and Ireland (known as the British-Irish Agreement). The Good Friday Agreement is available online at <https://www.gov.uk/government/publications/the-belfast-agreement> (accessed October 15, 2021).

Northern Ireland Executive and the equal standing of the First Minister and deputy First Minister who typically represent the unionist and nationalist communities respectively (ibid.).

Strand two comprises bodies for cross-border cooperation between Northern Ireland and the Republic of Ireland. These bodies give expression to the *Irish dimension* that has been key for nationalists' acceptance of any political settlement in Northern Ireland. The key strand two institution is the North-South Ministerial Council (NSMC) that brings together members of the Irish government and of the Northern Ireland Executive (North-South Ministerial Council, n.d.). Meetings of the NSMC can take place in plenaries or in sectoral formats. The NSMC is also supported by a permanent secretariat (Murphy 2014, 139). Additionally, there are six North-South Implementation Bodies that deal with narrowly defined, technical issues of mutual interest such as the implementation of EU funds or the management of food standards (ibid., 142ff).

Strand three aims at fostering the cooperation between the islands of Great Britain and Ireland and between the UK and Irish governments. The British Irish Council aims to promote friendly relationships across the islands and includes representatives of the executives of Ireland, the UK, Northern Ireland, Scotland, Wales, Guernsey, the Isle of Man, and Jersey (British Irish Council, n.d.). The British-Irish Intergovernmental Conference serves as a forum for consultation between the UK and the Irish governments. The predecessor of the Conference was set up during the period of direct rule in 1985, when the UK government granted the Irish government a right to be consulted on matters concerning Northern Ireland as part of the Anglo-Irish Agreement (Coakley and Todd 2020, 347). This agreement, although fiercely contested at the time, was a significant stepping stone to the initiation of the Northern Ireland peace process of the 1990s (ibid.).

The 1998 GFA and the resulting autonomous institutions for Northern Ireland were created at a time when the *New Labour* government under Tony Blair instituted far-reaching territorial reforms throughout the UK. These reforms put an end to the UK's constitution as a centralized state and gave expression to different national identities in Scotland, Wales and Northern Ireland (Jeffery 2007). Remarkably, no attempts have yet been made to give an institutional expression to the national identity of the UK's largest constituent unit, England. This results in a highly asymmetrical state structure. England, where 85% of the UK's population live has no territorial self-rule, while Scotland, Wales and Northern Ireland all have specific sets of autonomous competences that are regulated in designated Acts of Parliament (ibid.).²

Among the devolution Acts, Northern Ireland's autonomy stands out for two reasons. Firstly, autonomy in Northern Ireland, unlike in Scotland and Wales, builds on an international treaty. The

² Scotland Act 1998, Scotland Act 2012 and Scotland Act 2016; Government of Wales Act 1998, Government of Wales Act 2006, Wales Act 2014 and Wales Act 2017; Northern Ireland Act 1998. See <https://www.gov.uk/guidance/devolution-of-powers-to-scotland-wales-and-northern-ireland> (accessed October 15, 2021).

GFA was approved by most relevant political parties in Northern Ireland, as well as by the UK and the Irish governments. The two governments, thus, serve as co-guarantors of the GFA (McEvoy and Morison 2002). Moreover, the GFA was ratified in two simultaneous referendums in both Northern Ireland and in the Republic of Ireland (Hancock 2011). Secondly, the autonomy arrangements for Northern Ireland include a clause that explicitly allows for the secession of Northern Ireland from the UK, and for the establishment of a united Ireland (Ginty et al. 2001).³ The UK government is obliged to hold a referendum on Northern Ireland's constitutional status when it appears likely that there will be a majority in favor of Irish unification. However, the GFA does not specify how this likelihood is to be assessed and hence leaves considerable discretion with the UK government's Secretary of State for Northern Ireland. The devolution settlements for Scotland and Wales do not include explicit clauses for independence referendums.

3. Establishment and Implementation of Autonomy

The current autonomy settlement is based on the realization among all key actors – the UK and Irish governments, parties in Northern Ireland, and international mediators like the US government – that the peaceful and democratic governance of Northern Ireland requires cooperation throughout the “totality of relationships” (Hume 1986). This means that, following the violent conflict between 1969 and 1998, all relevant parties in Northern Ireland should be included in the region's government; the interactions between the Republic of Ireland and Northern Ireland needed to be transformed; and the UK and Irish governments need to cooperate in implementing a settlement in Northern Ireland. This approach materialized in the three strands of the 1998 Good Friday Agreement (GFA). The fostering of cooperative relations throughout all three sets of relationships and managing them through the institutions of the GFA has proven difficult on several occasions. This is partially due to the “constructive ambiguity” of the GFA that facilitated in compromise solutions in 1998 and beyond, but left several details of the peace settlement unspecified and open to competing interpretations (Todd 2017). The UK's decision to leave the EU and the resulting questions around the management of the borders between the Republic of Ireland, Northern Ireland and the rest of the UK have additionally strained cooperation across the three strands.

3.1. Internal Relations and Power-Sharing

Since the early 1970s, Northern Ireland's party system has been segregated between unionist and nationalist parties (Coakley 2008). Non-aligned parties have only made significant electoral

³ According to Article 1(1) (Constitutional Issues) of the GFA, the signatory parties “recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland”.

advances in most recent elections (Tonge 2020). The communal division within the party system, and multiple parties' close ties with terrorist groups made the establishment of an inclusive regional government particularly complex. However, by the 1990s, there was wide-spread agreement that cross-communal power-sharing had to be an integral part of Northern Ireland's autonomy arrangements.

The first, short lived attempt at power-sharing in 1974 only included parties that rejected political violence and that were willing to cooperate across communal boundaries. This included the Ulster Unionist Party (UUP), the moderate nationalist Social Democratic and Labour Party (SDLP) and the cross-community Alliance Party. The radically nationalist ("republican") Sinn Féin and the hard-line unionist Democratic Unionist Party (DUP) were excluded (Wolff 2001). The DUP opposed any concessions to nationalists and was involved in the Ulster Workers' Council strike that led the 1974 power-sharing government to resign after only five months (Gillespie 1998). Sinn Féin, at the time, rejected all political offices and pursued its political goal (a socialist united Ireland) exclusively through the political violence of its terrorist branch, the Irish Republican Army (IRA) (Maillot 2005). Only over the course of the 1980s and 1990s, Sinn Féin decided to stand in elections and to accept political mandates (the party still boycotts the UK parliament and, despite being elected, does not take its seats in Westminster). Upon the IRA's ceasefires in 1994 and 1997, Sinn Féin was admitted to the multiparty talks that led to the GFA. In 1998, Sinn Féin, alongside other moderate parties, campaigned for the approval of the GFA in referendums in both parts of the island of Ireland. Sinn Féin then entered Northern Ireland's power-sharing government as Northern Ireland's fourth biggest party (ibid.). However, disputes over the decommissioning of the IRA's weapons, alleged spying by the IRA on the Northern Ireland Executive and Sinn Féin's belated acceptance of Northern Ireland's police reform destabilized power-sharing in the region. This led to the suspension of territorial autonomy on multiple occasions and to the re-introduction of direct rule, most significantly between October 2002 and May 2007. At the same time, Sinn Féin's electoral success among nationalists has been steadily growing. Since 2001, it has been the largest nationalist party and the second-largest party in Northern Ireland overall (Mitchell, Evans and O'Leary 2009).

The DUP, in turn, opposed the GFA and proactively campaigned against its ratification in the 1998 referendum. The DUP's electoral support has also grown substantially post-1998, making it the largest unionist party and the largest party in Northern Ireland (ibid.). While the DUP participated in the first power-sharing government 1998-2002, the party refused to share power with Sinn Féin after the suspension of autonomy in 2002. Only with the 2006 St Andrews Agreement⁴ that

⁴ The St Andrews Agreement was reached in multi-party negotiations held from 11 October to 13 October 2006 between the UK and Irish governments and all the major parties in Northern Ireland, including the DUP and Sinn Féin. The St

amended some provisions of the 1998 GFA (for instance, the appointment of the First Minister and deputy First Minister), the DUP and Sinn Féin formed a power-sharing government that remained in office for over two consecutive legislative terms (2007-2017) (Nagle 2018, 401f).

More recently, opposing preferences on Brexit and allegations of corruptions have again revealed the fragility of Northern Ireland's power-sharing arrangements. The mismanagement of a renewable energy fund led to another *de facto* suspension of regional institutions between March 2017 and January 2020. The UK's decision to leave the EU has further complicated cooperation between unionist and nationalist parties. Unionists have predominantly supported Brexit, while nationalists have advocated remaining in the EU (Coakley and Garry 2016). Nationalist and non-aligned parties have also supported special arrangements for Northern Ireland after Brexit in order to avoid any physical manifestation of the almost invisible land border with the Republic of Ireland. Unionists have opposed any such arrangements (Utz 2019a, 371f; Evershed and Murphy 2021). Consequently, the agreement between the UK government and the EU that keeps Northern Ireland *de facto* in the EU's Single Market for goods and in the EU's customs union (Protocol on Ireland/Northern Ireland)⁵ has been welcomed by nationalist and non-aligned parties but has been rejected by unionists (Hayward 2020). Opinion polls suggest that nationalist voters agree with *their* parties' position on the Protocol, while unionist voters are increasingly split between non-aligned pro-EU parties and the traditionally Eurosceptic unionist parties. If these changes in public opinion translate into electoral results, Sinn Féin is likely to become the largest party in the 2022 regional election (Breen 2021). This would make a nationalist party the strongest force in the regional legislative assembly for the first time in Northern Ireland's history.

3.2. Cross-Border Dynamics and Kin-State Activism

Before the Troubles, political engagement between the Republic and Northern Ireland had been rather limited. The two heads of government only met for the first time in 1965, 44 years after the partition of the island (Bew, Gibbon and Patterson 2002, 168). At the same time, Article 2 of the 1937 Constitution of Ireland stated that "The national territory consists of the whole island of Ireland, its islands and the territorial seas",⁶ thereby claiming the territory of Northern Ireland for the Republic. However, this territorial claim was predominantly symbolic and no Irish government,

Andrews Agreement is available online at <https://www.gov.uk/government/publications/the-st-andrews-agreement-october-2006> (accessed October 15, 2021).

⁵ The Protocol on Ireland/Northern Ireland is annexed to and an integral part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. The UK-EU Withdrawal Agreement and the Protocol on Ireland/Northern Ireland are available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12020W/TXT&from=EN> (accessed October 15, 2021).

⁶ Article 2 of the 1937 Constitution of Ireland was revised by the Nineteenth Amendment of the Constitution Act 1998. The amendment was approved by the referendum of 22 May 1998 which allowed the state to be bound by the GFA. The amended Article 2 provides that everyone born on the island of Ireland has the right to be a part of the Irish Nation.

regardless of party-political composition, has ever actively pursued the integration of Northern Ireland into the state's territory (Coakley 2017).

A significant step to overcome the discrepancy between Ireland's constitutional claim and its actual foreign policy was taken upon the initiative of moderate nationalists from Northern Ireland: The New Ireland Forum brought together the main parties from the Republic and the SDLP to discuss possible future scenarios for the governance of the island of Ireland between 1983 and 1984 (Kornprobst 2008, 201f). Even though the Forum's proposals (a unitary Irish state, a federal/confederal state, or joint British/Irish authority over Northern Ireland) were immediately ruled out by the UK government and were never seriously discussed with a wider audience, the Forum had two significant effects. Firstly, the Forum contributed to an increasingly close engagement between the Irish and the UK governments on issues concerning Northern Ireland. This led to the 1985 Anglo-Irish Agreement in which Ireland *de facto* renounced its claim to Northern Ireland. In return, the UK government conceded to consult the Irish government on matters concerning Northern Ireland (Coakley and Todd 2020, 110ff). Secondly, the Forum helped Ireland's main parties rethink their overall approach towards Northern Ireland. In the longer run, this led to a revision of the Constitution of Ireland which now only aspires to unification with Northern Ireland on the basis of a unity referendum as detailed in the GFA. *De jure*, the 1998 referendum on the GFA in the Republic of Ireland was a referendum on changing Ireland's Constitution accordingly (Coakley 2017).

The peace process of the 1990s and the GFA have further modified the relationship between Ireland and Northern Ireland. The border between the two jurisdictions was becoming increasingly invisible since the security infrastructure that had been established there during the Troubles was gradually dismantled (Nash, Reid and Graham 2016, 109ff). Cross-border cooperation between the two parts of the island became institutionalized through North-South institutions. By virtue of the GFA, individuals who are born in Northern Ireland can also choose whether they want to hold British or Irish citizenship or both. Additionally, the completion of the Single European Market in 1993 led to the removal of customs posts from the border (McCall 2018). All these developments facilitated the acceptance of the border on the part of nationalists. At the same time, Ireland's revocation of territorial claims and the limited remit of the North-South bodies reassured moderate unionists that the GFA would protect Northern Ireland's position within the UK (Gormley-Heenan and Aughey 2017).

The UK's withdrawal from the EU has put this delicate (and for the most part, implicit) compromise around the border at risk (ibid.). Typically, physical infrastructure is required at the EU's external borders to control the quality of goods entering the Single Market or to charge tariffs on imports.

The prospect of such infrastructure being put in place between Northern Ireland and the EU member state Ireland raised concerns about how the different communities in Northern Ireland would respond to such measures. Numerous commentators warned of a possible surge in political violence in reaction to new installations at the border (Murphy 2018). While the Northern Ireland Protocol avoids additional infrastructure at the land border with Ireland and satisfies nationalists' demands, the Protocol mandates that such controls are carried out between Great Britain and Northern Ireland (Phinnemore 2020). This has resulted in wide-spread unionist opposition to the Protocol, and radical factions of unionism openly questioning the 1998 GFA (McClements 2021, BBC 2021a).

3.3. Interstate Relations

Cooperation between the UK and Irish governments, and their regular interventions to resolve political tensions in Northern Ireland have been crucial to ensuring the functionality of the region's political institutions. Most agreements that underpin Northern Ireland's power-sharing arrangements have initially been negotiated between the two governments and have only subsequently been ratified by the local political parties (Todd 2017). This is true for the 1998 GFA, the 2006 St Andrews Agreement and, most recently, for the 2020 New Decade New Approach Deal⁷ that reinstated power-sharing after Brexit.

Three factors have been vital for the cooperation between the UK and Ireland. Firstly, the two governments needed to arrive at a shared analysis of political issues in Northern Ireland. This shared understanding developed from the mid-1980s onwards, as can be seen from the 1985 Anglo-Irish Agreement. Mediation from a number of US administrations facilitated this convergence (Guelke 2012). Secondly, the two governments need to be considered as neutral arbiters by the parties in Northern Ireland. The revocation of Ireland's constitutional claim to Northern Ireland, the UK's acceptance of a referendum on Irish unification and the assurance that the UK government has "no selfish strategic or economic interest in Northern Ireland" (UK and Irish governments 1993, point 4) were critical in this respect. Thirdly, Ireland's political and economic emancipation from the UK enabled the former to pursue a more independent foreign policy. Ireland's membership in the EU and the economic boom of the 1990s (when the country was nicknamed the "Celtic Tiger") helped this development (Hayward 2009). At the same time, former colonial links between the UK and Ireland facilitated some of the cooperation between the two countries. Most significantly, there have never been official passport controls between the two states (except for the Second World

⁷ The New Decade, New Approach Deal signed by the UK and Irish governments in January 2020 ended a three-year hiatus in the region's devolved government. It aims to introduce several institutional reforms and to solve disputed issues related to culture, language and identity. For details, see Haughey (2020).

War), thanks to the informal arrangements of the Common Travel Area (CTA). The CTA also gives UK and Irish citizens far-reaching citizenship rights, including the right to vote in general elections, in the respectively other state (Ryan 2001).

While shared membership in the EU was an additional factor that helped the UK-Ireland cooperation over Northern Ireland, Brexit has caused new tensions between the two states. The Irish government openly supported the UK to stay in the EU. After the 2016 Brexit referendum, the Irish government was instrumental in shaping the EU's position on Northern Ireland. All EU institutions have consistently acknowledged "unique circumstances and challenges on the island of Ireland" and have argued for the land border to remain open and invisible (European Council 2017). Moreover, the European Council declared in 2017 that all of Ireland would remain a part of the EU if Northern Ireland was to unite with the Republic (Murphy 2018, 115). The UK government, in turn, has tended to downplay Brexit's effects on Northern Ireland and has delayed the implementation of the Northern Ireland Protocol on multiple occasions. This has led to increasing tensions between the UK on the one hand, and Ireland and the EU on the other (O'Leary 2021).

4. Legal Basis of Autonomy

The Good Friday Agreement (GFA), as an international agreement between the UK and Irish governments, has been implemented in the UK via the Northern Ireland Act 1998.⁸ The Act creates the domestic legal foundation for the autonomous institutions, specifies the details of the power-sharing arrangements and delimits Northern Ireland's autonomous competences (see section 6 below). The Northern Ireland Act has been amended on multiple occasions, for instance to give legal effect to the provisions of the St Andrews Agreement.⁹

The constitutional standing of the Northern Ireland Act(s) and of the GFA is a matter of dispute (McEvoy and Morison 2002). This is mainly owed to the diverging interpretations of the UK's Constitution that does not build on a single constitutional document, but on an assemblage of conventions and pieces of legislation. An orthodox interpretation of the UK Constitution centers on the principle of parliamentary sovereignty. This means that any act of parliament can be abrogated by a subsequent act of parliament. This can be done with a simple parliamentary majority. According to this interpretation, the Northern Ireland Act 1998 and subsequent amendments represent the will of the UK parliament. The 1998 referendum and the GFA's international dimension are only an

⁸ The Northern Ireland Act 1998 is available online at <https://www.legislation.gov.uk/ukpga/1998/47/enacted> (accessed October 15, 2021).

⁹ See Northern Ireland (St Andrews Agreement) Act 2006 and Northern Ireland (St Andrews Agreement) Act 2007 at <https://www.legislation.gov.uk/> (accessed October 15, 2021).

afterthought. The multiple re-introductions of direct rule that were not provided for in the GFA but legislated for by the UK parliament substantiate this argument (ibid., 964).

An alternative reading of the UK and Northern Ireland's Constitution hold that the GFA and its implementing acts deviate from the principle of parliamentary sovereignty. This second view emphasizes the sovereignty of the people of Northern Ireland who endorsed the GFA in the 1998 referendum (ibid., 965-969). It also argues that the international character of the GFA makes the implementing acts of parliament qualitatively different from other legislation. The fact that all Northern Ireland Acts after 1998 build on the template of the GFA confirms the interpretation of the GFA as a distinct constitutional document. Additionally, the interpretation of the GFA's provisions over the course of its implementation has not been a purely domestic issue for the UK. Rather, the adjudication of the GFA took place through informal negotiations between the UK and Irish governments, giving rise to a "British-Irish quasi-constitutionalism" (Todd 2017, 309).

5. Autonomous Institutions

As highlighted above, the Good Friday Agreement (GFA) manages a complex set of institutions across the islands of Great Britain and Ireland. The focus of this section lies on the *strand one* institutions (see section 2 above) that manage Northern Ireland's devolved matters.

5.1. Legislature

The Northern Ireland Assembly is the region's unicameral legislature. Members of the Legislative Assembly (MLAs) are elected every five years based on the largely proportional Single Transferable Vote system. The 90 (before 2016, 108) seats in the Assembly are distributed across 18 parliamentary constituencies with five (previously six) seats each. In the first session after an election, MLAs must designate themselves as *unionist*, *nationalist*, or *other*.¹⁰ This serves to assess cross-community support in key votes such as the election of the Speaker, approval of the budget, or change in the Assembly's Standing Orders. Cross-community support is achieved by either *parallel consent* or *weighted majority*. The former means approval by at least 50% of present and voting MLAs, plus 50% of unionists and nationalists, respectively. The latter means approval by 60% of present and voting MLAs, plus 40% of unionists and nationalists. Through a *petition of concern*, 30 MLAs or more can require cross-community support in other matters as well. This was originally

¹⁰ An MLAs who does not designate himself/herself is deemed to be designated *other*. An MLA may change his/her designation if he/she becomes a member of a (different) political party, or he/she ceases to be a member of any political party. Such change takes effect immediately after a written notification is submitted to the Speaker. See Section 3 (11)-(13) of the Standing Orders of the Northern Ireland Assembly. The Standing Orders are available online at <http://www.niassembly.gov.uk/assembly-business/standing-orders/> (accessed October 15, 2021).

intended to prevent crucial interests of either community to be disregarded in the Assembly. However, the petition of concern has also been used to veto decisions on matters such as same-sex marriage or the legalization of abortion in Northern Ireland (Gray et al. 2018, 107). In other devolved matters (see section 6 below), the Northern Ireland Assembly can pass primary legislation with simple majorities.

The committees in the Northern Ireland Assembly mirror the pre-defined ministerial portfolios in the Northern Ireland Executive. They serve inter alia to approve relevant secondary legislation and to scrutinize proposed primary legislation. Committee chairs are allocated proportionately, using the method of d'Hondt, to include all relevant political parties. The composition of committees is also proportional to party representation in the Assembly.

The Northern Ireland Assembly is interdependent with the *strand two* North-South Ministerial Council (NSMC) (see section 2 above). The Assembly cannot function without the NSMC and vice versa. This is to prevent unionists from boycotting the NSMC which they might consider as an undesirable stepping stone towards a united Ireland; and to ensure nationalists' participation in the Assembly, despite their traditional skepticism vis-à-vis a UK-internal settlement for Northern Ireland.

5.2. Executive

The Northern Ireland Executive is the administrative branch of the region's autonomous institutions. It comprises the Executive Office and currently eight departments. The Executive Office is the joint department of the First and deputy First Minister. The two positions can only function in tandem and are of equal standing, despite the notion of *deputy*. The First and deputy First Ministers co-ordinate the work of the Northern Ireland Executive and represent Northern Ireland in its external relationships.

The members of the Northern Ireland Executive are appointed by the parties that are represented in the Assembly. This ensures that all parties that secure a certain share of votes are entitled to participate in the power-sharing government. The largest party nominates the First Minister, and the largest party in the other community (nationalist, unionist or other) nominates the deputy First Minister. The other portfolios are allocated to the parties through the method of d'Hondt. This guarantees that the proportion of a party's seats in the Assembly is similar to the proportion of government departments allocated to the same party.

One exception to this rule is the Minister of Justice who is elected by a cross-community vote in the Assembly. This exception reflects the particular sensitivities around the topics of policing and justice in Northern Ireland's post-conflict society. Prior to the 2006 St Andrews Agreement, the First and deputy First Ministers were also elected via cross-community votes.

A cross-community vote can also be used by the Assembly to remove individuals or parties from the Northern Ireland Executive if they are “not committed to non-violence and exclusively peaceful and democratic means”¹¹ or if they fail to observe other elements of the pledge of office that is specified in the GFA. However, a more common way to challenge the composition of Northern Ireland Executive is to *collapse* the autonomous institutions. This means that the First or Deputy First Minister resigns and – by virtue of the two offices’ interconnection – forces his or her respective counterpart to resign as well. Most recently, this occurred in January 2017 and caused a three-year long suspension of the autonomous institutions.

5.3. Judiciary

Northern Ireland’s legal system, like Scotland’s, has never been integrated with that of England and Wales. This has allowed for a distinct court system in the region, even during periods of direct rule, or for non-devolved matters (Dickson 2018). While some Northern Ireland legislation has been closely aligned with legislation in England and Wales, judicial procedures have often been heavily influenced by the experience of political violence. The existence of *Diplock courts*¹² that dealt with serious offences related to terrorism without a jury until 2007 is a case in point (McAlinden and Dwyer 2015, 8).

The establishment of the UK Supreme Court in 2009 created a final court of appeal for the entire UK, including Northern Ireland. Between 2009 and 2019, the Supreme Court ruled on 28 Northern Ireland-related cases on a wide range of legal issues (Dickson and McCormick 2020). However, critics lament that the Court has promoted a conservative understanding of the legal underpinnings of territorial autonomy. This has left the precise function of devolution open to political contestation (McCrudden and Halberstam 2017; see section 6 below).

6. Autonomous Powers

The Northern Ireland Act 1998 specifies three categories of policy areas: transferred matters, excepted matters and reserved matters. Northern Ireland’s institutions have full autonomous

¹¹ Section 30(1)(a) and (2)(a) of the Northern Ireland Act 1998.

¹² These criminal courts (named after Lord Diplock who chaired the Commission that recommended this form of non-jury trial) were established by the Northern Ireland (Emergency Provisions) Act 1973. The Diplock courts system was technically abolished in 2007. However, the Justice and Security (Northern Ireland) Act 2007 provides for trial without a jury and the Director of Public Prosecutions for Northern Ireland has a temporary power to decide that exceptional cases should be tried in this way. The Justice and Security (Northern Ireland) Act 2007 provides that its non-jury trial provisions expire at the end of the period of two years beginning with 1 August 2007. However, the 2007 Act enables the Secretary of State for Northern Ireland to extend by order the effective period for two years beginning with the time when the effective period would end but for the order. So far, the application of the non-jury trial provisions of the 2007 Act has been extended seven times. Most recently, the Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2021 came into force on 22 July 2021.

competences over transferred matters. They can pass primary and secondary legislation in this field. These include predominantly economic and social policies such as health and social services, education, employment, environmental issues or transport. Since 2010, policing and criminal justice are also transferred matters. Excepted matters are considered to be of national importance and are the exclusive realm of the central government and parliament. These include defense, international relations, currency, nuclear energy or royal succession. Reserved matters, such as arms control, broadcasting, intellectual property or aviation are the prerogative of the central state, but the autonomous institutions can legislate in this field with the consent of the UK government. Any residual matters are transferred matters.¹³

The distribution of powers laid out in the Northern Ireland Act stands in potential conflict with the UK's constitutional principle of parliamentary sovereignty (see section 4 above). The main question underlying this tension is: can the UK parliament overrule decisions taken by Northern Ireland's (or Scotland's or Wales's) autonomous institutions? In other words, to which degree, if at all, do the devolution settlements constrain the UK parliament and, hence, its sovereignty? In most circumstances, this question is resolved through the Legislative Consent or *Sewel Convention* (Evans 2020). The convention, named after Lord Sewel, specifies that the UK parliament "would not normally legislate with regard to devolved matters" (ibid., 165) without the consent of the devolved institutions. This creates a reasonable expectation at all levels of government that the central state will not overrule devolved legislation at will. However, there are no legal safeguards to prevent UK institutions from overruling devolved legislation or to legislate in devolved matters without devolved institutions' consent. This has been made explicit in the *Miller* case,¹⁴ where the UK Supreme Court ruled that the government's decision to leave the EU must be ratified by the UK parliament but not by the legislatures of Northern Ireland, Scotland or Wales. While autonomous competences like agriculture or environmental protection have been directly affected by Brexit, the Court established that the requirement for the devolved institutions' consent is not legally enforceable. The Sewel Convention's precise effects need to be "determined within the political world" (Anthony 2018, 6).

7. Financial Arrangements

Northern Ireland's economy lacks behind the UK average in terms of key indicators such as productivity, GDP per capita or economic growth (Office for National Statistics 2021b). While

¹³ For details regarding transferred matters, excepted matters and reserved matters, see Section 4(1) and Schedules 2 and 3 of the Northern Ireland Act 1998.

¹⁴ *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5 (24 January 2017).

unemployment rates in recent years have been below the UK average (Office for National Statistics 2021a), the share of employees working in the public sector is disproportionately high. These characteristics of the regional economy result from a mix of industrial decline, the legacy of the Troubles and the Republic of Ireland's comparative advantage in attracting foreign direct investment, among other things (Murphy 2018, 67ff).

Northern Ireland's institutions are largely funded through a block grant from the UK central state. The height of this funding is calculated according to the *Barnett formula* (Institute for Government 2020a). This formula calculates Northern Ireland's autonomous budget based on the region's spending in the previous year and adjusts the contributions from the central state in line with spending increases or decreases per person in England. For example, if funding for health services in England increased by 100 million GBP compared to the previous year, contributions to Northern Ireland would grow by 3.4 million GBP given that Northern Ireland's population is 3.4% that of England's. By virtue of the Barnett formula, Northern Ireland received 12 billion GBP in the tax year 2019/20. The autonomous institutions can use the funds that are allocated through the Barnett formula at their own discretion. To return to the above example, additional funds that result from increases in funding for health services in England do not have to be used for health services in Northern Ireland (ibid.).

Taxing powers are to the largest part the prerogative of the central state. While some taxing powers have been devolved to Scotland, this has only happened on a smaller scale in the case of Northern Ireland (Institute for Government 2020c): Long-haul air passenger duty was devolved to Northern Ireland and subsequently abolished in 2012. Competences for corporation tax were also devolved to Northern Ireland in 2015 to make the region more competitive vis-à-vis the Republic of Ireland, where corporation tax is among the lowest in Europe. However, Northern Ireland has not yet passed any legislation in this field, given that this would lead to a reduction of funds that Northern Ireland would be entitled to through the Barnett formula (Campbell 2021). In March 2021, an Independent Fiscal Commission for Northern Ireland was established to make recommendations for the devolution of additional taxing powers.¹⁵

Funding from the European Union, although much smaller than UK-internal transfers in absolute terms, has also had a large symbolic impact in Northern Ireland (Murphy 2014, 50). EU institutions have been committed to financially support Northern Ireland's peace process and to provide funding for cross-community and cross-border projects. In the wake of the paramilitary ceasefires in 1994, the EU created the PEACE programme which has so far been renewed four times and which

¹⁵ For details, see the information available on the website of the Independent Fiscal Commission for Northern Ireland at <https://www.fiscalcommissionni.org/terms-reference> (accessed October 15, 2021).

will be continued despite Brexit. Between 1995 and 2020, the EU's PEACE programmes allocated almost 1.6 billion EUR to Northern Ireland and to the border counties in the Republic of Ireland (European Parliament 2021).

8. Intergovernmental Relations

Besides the North-South and East-West institutions that were created as part of the GFA, the Northern Ireland Executive participates in the UK-wide Joint Ministerial Committee (JMC). This is an informal, intergovernmental conference that brings together the UK government and the devolved administrations from Northern Ireland, Scotland and Wales in a multilateral format. The format and the remit of the JMC was specified in a Memorandum of Understanding between the UK government and the devolved administrations. The plenary format (JMC(P)) is supposed to meet at least once a year and includes the heads of the respective executives (the First and deputy First Minister for Northern Ireland), the Secretaries of State for the devolved nations, one other minister from Scotland and Wales each, and other ministers upon invitation. The Secretary of State for Northern Ireland is a member of the UK cabinet and is typically not from Northern Ireland (given that the parties who have held the UK government have only been elected in constituencies in Great Britain). The official remit of the JMC is to (a) to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities; (b) to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom; (c) to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and (d) to consider disputes between the administrations (UK government 2012).

However, the JMC(P) has not convened regularly and was largely redundant in the early years of devolution when the same political party (Labour) was in power in England, Scotland and Wales, and Northern Ireland was under temporary direct rule. When the JMC(P) has met, the devolved administrations have lamented the dominance of the central government and the weakness of the JMC as a vehicle for shared decision making. The remit of the functional format JMC Domestic (JMC(D)) has been even less clear (McEwen 2017, 673ff). On those occasions where the JMC has met and Northern Ireland's autonomous institutions were suspended, the region has been represented by senior civil servants (Institute for Government 2020b).

Intergovernmental relations regarding European affairs have a somewhat different track record. The JMC Europe (JMC(E)) met on a regular basis, in line with the schedule of the European Council, when the UK was still a member of the EU. The JMC(E) also gave more leeway to the devolved administrations to express their views and allowed them to feed their expertise in certain policy

fields into the UK position. Persistent power asymmetries between the administrations and a lack of expertise on EU matters among Northern Irish politicians, however, limited the benefits of these engagements for the region (McEwen 2017, 676; Murphy 2014, 97ff).

In 2016, the JMC EU Negotiations (JMC(EN)) was created for the consultation and, where possible, intergovernmental coordination of the UK's Brexit negotiations (McEwen 2020, 5). While meetings occurred more regularly than with other JMC formats, the JMC(EN) was ineffective in giving expression to the devolved administrations' preferences on the UK's negotiating position with the EU. Moreover, the suspension of Northern Ireland's autonomous institutions during most of the Brexit negotiations and the deep divisions over the issue of Brexit between the parties in the region prevented Northern Ireland from influencing the UK's domestic legislation that accompanied Brexit – unlike the Scottish and Welsh governments that successfully campaigned for amendments to the European Union (Withdrawal) Act 2018 (*ibid.*). More constructive intergovernmental engagements on Brexit have taken place over technical issues: common frameworks to avoid divergence between the different parts of the UK, now that EU law does no longer serve as a baseline for legislation across all levels of government, are being developed jointly by all four UK administrations (Scottish Parliament 2021).

The Northern Ireland Protocol has also created new, although very limited, opportunities for Northern Ireland's institutions to engage with the EU and the UK. Most significantly, the Northern Ireland Assembly has an opportunity to express its democratic consent on the continued application of those elements of the Protocol that link the region to the Single European Market for goods, to the Customs Union, to the single electricity market and to EU rules for state aid and value added tax (Phinnemore 2020, 645). In these fields regulated by Articles 5-10 of the Protocol, EU legislation continues to apply in Northern Ireland but not in the rest of the UK. The vote in the Assembly will take place four years after the end of the Brexit transition period, i.e., at the end of 2024. If the Assembly votes in favor of the continued application of Articles 5-10 with a single majority, they will continue to apply for another four years; if there is cross-community support (see section 5 above) for the continued application, this will be extended to another eight years. If there is a lack of support for the continued application of Articles 5-10, the entire Protocol will continue to apply for another two years in which the UK and the EU will have to negotiate alternative arrangements.

The EU-UK Joint Committee that is responsible for the overall implementation of the UK's Withdrawal Agreement with the EU can also invite representatives of the Northern Ireland Executive when Northern Ireland-specific issues are being discussed. Usually, the Joint Committee includes representatives from the EU Commission and the UK government (Hayward, Phinnemore and Komarova 2020, 47). A Specialised Committee on issues related to the implementation of the

Protocol on Ireland/Northern Ireland supports the Joint Committee (alongside five other specialised committees). The Specialised Committee on the Protocol will examine proposals concerning the implementation and application of the Protocol from the North-South Ministerial Council and from the North-South Implementation Bodies (see section 2 above). This includes the Northern Ireland Executive in tandem with the Irish government. Information on relevant implementation measures regarding the Protocol are also exchanged between the UK and the EU via a joint consultative working group (ibid., 49ff).

9. Intergroup Relations within Northern Ireland

The record of Northern Ireland's community relations since the 1998 Good Friday Agreement (GFA) is mixed. There has been a clear reduction in political violence that can be traced back to the GFA and to the paramilitary ceasefires of the 1990s. However, paramilitary groups continue to operate in Northern Ireland, although on a much smaller scale than before the agreement was signed. While the number of deaths related to political violence amounted to 55 in 1998,¹⁶ the number of deaths per year since 2004 has remained in single figures (Gray et al. 2018, 107).

Another security-related aspect of improving cross-community relations was the reform of policing in Northern Ireland. The 1999 Patten Report¹⁷ on policing suggested, among other things, that the then predominantly Protestant police force should recruit an equal number of Protestants and Catholics from the pool of qualified candidates. This 50:50 recruitment pattern was applied between 2000 and 2011 and drove the share of Catholics in the Police Service of Northern Ireland (PSNI) from under ten to 30.3%. Since 2011, this proportion has only changed to a minor degree (ibid., 115). The reform of policing substantially strengthened the confidence in the security forces with 76% of Catholics and 84% of Protestants considering the performance of the PSNI to be very good or fairly good (ibid., 120). In comparison, in 1998 only 16% of Catholics but 71% of Protestants believed that their own group was treated better by the police (Northern Ireland Life and Times 1998).

In the field of party politics, the expectation held by many commentators that voters would reward moderate unionist and nationalist parties for achieving the 1998 peace settlement did not materialize. The Democratic Unionist Party (DUP) and Sinn Féin have both overtaken the more moderate Ulster Unionist Party (UUP) and Social Democratic and Labour Party (SDLP) within their respective communities (Mitchell, Evans and O'Leary 2009). However, the prospect of occupying

¹⁶ 29 people died in the Omagh bombing four months after the GFA was signed.

¹⁷ The Independent Commission on Policing for Northern Ireland (established in 1998 by the GFA) published its report "A New Beginning: Policing in Northern Ireland" (known as the Patten Report) in September 1999. The Patten Report is available online at <https://cain.ulster.ac.uk/issues/police/patten/patten99.pdf> (accessed October 15, 2021).

public offices in the power-sharing executive has led to a considerable moderation of the DUP's and Sinn Féin's positions, especially regarding the legitimacy of Northern Ireland's autonomous institutions. This was most noticeable through their collaboration in the Executive between 2007 and 2017. This happened notwithstanding recurrent tensions between the two parties, for instance over the display of the Union flag on Belfast City Hall (Hearty 2015).

Political issues that are, in principle, unrelated to the divisions between Northern Ireland's communities are also frequently politicized along the unionist/nationalist divide. The legalization of abortion or of same-sex marriage have been particularly prominent examples in this respect. On such issues, Sinn Féin typically takes liberal positions (Maillot 2005, 102ff), whereas the DUP is vehemently opposed to liberalization in Northern Ireland, despite more liberal legislation being in place in the rest of the UK. The DUP has used the petition of concern (see section 5.1. above) to veto the liberalization of same-sex marriage in the Northern Ireland Assembly. This, and other applications of the petition of concern have called its appropriateness as a tool for minority protection into question (Gray et al. 2018, 66f). During the suspension of the autonomous institutions (from January 2017 to January 2020), the UK parliament passed legislation for both the liberalization of abortion and same-sex marriage (Page 2019). In the context of Brexit, some commentators have argued that Sinn Féin's moderation of policy positions has continued, given that the party has substantially revised its traditional Euroscepticism (Utz 2019b, Evershed and Murphy 2021). In contrast, the exclusionary understandings of sovereignty and British identity that have been promoted by supporters of Brexit in Great Britain have enabled more hardline positions within the DUP (Murphy and Evershed 2020). In the summer of 2021, for example, the DUP openly questioned its future commitment to power-sharing in Northern Ireland due to disputes over the implementation of the Northern Ireland Protocol (Black2021). Against this backdrop, the cross-community, pro-European Alliance Party has made substantial electoral gains and became the region's third biggest party in the 2019 European elections (Tonge 2020).

The expansion of the *middle ground* between unionists and nationalists is also evident in public opinion beyond party politics. In surveys, the share of people who define themselves as neither nationalist nor unionist has been growing since 1999. In the year after the GFA, only 30% of respondents in Northern Ireland described themselves as being neither nationalist nor unionist. In 2018, the share of respondents in this category amounted to 50% (BBC 2019). The same surveys also show that the gap between unionists and nationalists is becoming increasingly narrower. In 1999, 39% declared themselves as unionists and 29% as nationalists. In 2018, however, the two groups amounted to only 26 and 21%, respectively (ibid.). The convergence between the respective group sizes of unionists and nationalists can also be observed through the religious background of

Northern Ireland's population. In the 2001 census, 53.1% declared that they had been brought up in a Protestant community background and 43.8% in a Catholic community background (Northern Ireland Statistics and Research Agency 2001). In the 2011 census, the numbers amounted to 48 and 45%, respectively (Northern Ireland Statistics and Research Agency 2011). Among younger cohorts, nationalists/Catholics outnumber unionists/Protestants (ibid.).

Regarding the relationship between Protestants and Catholics, the picture is rather mixed. Surveys that investigate the perceived relationship between the two groups do not show a clear trend. In 2020, 49% of respondents thought that community relations were about the same as five years ago, 40% thought that they were better and 7% thought that community relations had become worse (Northern Ireland Life and Times 2020b). Similarly, in the same 2020 survey, 48% of respondents believed that community relations will be about the same in five years, 35% thought that they will become better, 9% thought that they will be worse (Northern Ireland Life and Times 2020a).

The physical segregation of the two communities is still common, particularly in urban spaces. Somewhat ironically, the number of *peace walls*, physical barriers that separate unionist and nationalist neighborhoods that were first erected by the British Army during the Troubles, has increased since the GFA (Gormley-Heenan and Byrne 2012). Moreover, members of the two communities are still predominantly educated in separate schools: in 2020, only 7% of students in Northern Ireland went to an *integrated* school, about 90% attended either Protestant-dominated state-run schools or Catholic schools. About 2% attended Irish-language schools (The Economist 2021).

10. Citizenship and Individual Rights

One essential element of conflict resolution was the official recognition that Northern Ireland's population can identify as British, Irish or both. The 1998 Good Friday Agreement (GFA) gives everyone who is born in Northern Ireland the right to hold British or Irish citizenship, or both. Both citizenships must be accepted by both governments. These provisions must not change if Northern Ireland was to become part of a united Ireland.

The rights of British and Irish citizens in the two states are also regulated in legislation that predates the GFA. The UK has never considered Irish citizens as foreign nationals. Ireland also grants British citizens civil, social and political rights akin to Irish citizens (Ryan 2001, 861). The free movement of people between the two states results from the Common Travel Area (CTA) that includes the UK, Ireland, the Channel Islands and the Isle of Man. The CTA is based on the shared understanding between the two states that systematic passport controls at the Irish land border are impracticable, and that controls on the movement of people between the islands of Ireland and Great Britain are

politically undesirable, especially from the perspective of unionists in Northern Ireland. Consequently, the two states cooperate on an informal basis to align each other's immigration and visa regulations. Controls on the movement of people between the islands were only in place during the Second World War and shortly thereafter (ibid.).

The CTA was maintained throughout the UK's membership in the EU. Both the UK and Ireland opted out of the Schengen *acquis*, and the CTA has been acknowledged by the EU since the 1997 Treaty of Amsterdam (ibid., 855). The UK's and Ireland's shared participation in the European Single Market further underpinned the provisions of the CTA. The four freedoms of the Single Market, for instance, guarantee individuals' rights to live, work or study in another EU member state (Young 2015, McCrudden 2017). Against the backdrop of these European provisions, the purpose of the GFA's citizenship provisions was mainly symbolic. The UK's decision to leave the EU, however, has created a new imbalance between British and Irish citizens in Northern Ireland: individuals who hold Irish citizenship in Northern Ireland continue to be EU citizens and maintain their right to freedom of movement within the EU; individuals who only hold British citizenship are now no longer EU citizens and the freedom of movement does no longer apply to them. This new discrepancy led to a 20% increase in applications for Irish passports in Northern Ireland in the first year after the 2016 Brexit referendum (Department of Foreign Affairs 2017).

Within the UK and Ireland, the status of Irish and British citizens has, however, not been substantially affected by Brexit. The Northern Ireland Protocol explicitly acknowledges in Article 2 that "[t]he United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in [...] the 1998 Agreement [...] results from its withdrawal from the Union, including in the area of protection against discrimination". Regarding the CTA, the Protocol specifies in Article 3 that "[t]he United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the 'Common Travel Area'), while fully respecting the rights of natural persons conferred by Union law"; and that "[t]he United Kingdom shall ensure that the Common Travel Area and the rights and privileges associated therewith can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and within Ireland for Union citizens and their family members, irrespective of their nationality".

In addition to the provisions for citizenship and minority rights, several parts of the GFA explicitly refer to the European Convention on Human Rights (ECHR). The GFA also created the Northern Ireland Human Rights Commission as a consultative body on fundamental rights, specifically charged with advising the UK legislature on a Bill of Rights for Northern Ireland. The Commission presented its advice to the UK government in 2008. Since then, UK government has not acted upon this advice

(Dickson and Gormally 2015, 6). The ECHR can also be directly relied upon in UK courts on the basis of the Human Rights Act 1998 (ibid., 5). The UK's governing Conservative Party has declared its intention to revise the Human Rights Act 1998 and the UK's commitment to the ECHR on several occasions. As of 2021, this has not happened but the UK's withdrawal from the ECHR would add to Brexit's de-stabilizing effects on Northern Ireland's autonomy and peace process (McCrudden 2017).

11. General Assessment and Outlook

The 1998 Good Friday Agreement (GFA) marks a watershed in Northern Ireland's political landscape. It has changed a region that was designed to safeguard the dominance of unionists to a space where unionists and nationalists are recognized as equals. This has helped to bring large-scale political violence in the region to an end. Moreover, the GFA aims to transform the "totality of relationships"¹⁸ between communities in Northern Ireland, between the jurisdictions on the island of Ireland, and between the islands of Great Britain and Ireland. These transformations have taken place to a degree. The Democratic Unionist Party (DUP) and Sinn Féin's commitment to share power in 2007 was arguably one of the biggest steps forward in bringing about these transformations. However, the parties' collaboration continues to be fragile, as the collapse of the autonomous institutions 2017-2020 has shown.

The weakness of cross-community cooperation within Northern Ireland has frequently been addressed by joint interventions of the UK and Irish governments. However, the UK's decision to leave the European Union has led to a deterioration of British-Irish relations, and to an increasing polarization between communities in Northern Ireland. Against this backdrop, the future stability of Northern Ireland's autonomous institutions is uncertain. The implementation of the Northern Ireland Protocol is likely to produce more tensions between governments and between the communities in Northern Ireland. Questions about the possible unification of the island of Ireland have become more pertinent in this context. At the same time, shifts in public opinion and an erosion of traditional community affiliations make the dynamics of politics in Northern Ireland increasingly hard to predict. Future regional elections might be less of a sectarian headcount than a judgement over parties' management (or refusal to manage) an increasingly complex institutional and policy environment.

While these dynamics make predictions ever more difficult, an assessment of the period since the Northern Ireland Protocol has entered into force in January 2021 might be a cause for optimism:

¹⁸ The phrase "totality of relationships" was first used in the joint communiqué issued at the end of the 1980 Dublin summit between the Irish and UK governments.

even though the GFA's institutions are operating under an increasingly adverse environment, peace in Northern Ireland has so far been maintained.

Bibliography

- Anthony, Gordon. 2018. “Devolution, Brexit, and the Sewel Convention”, The Constitution Society. Accessed October 15, 2021. <https://consoc.org.uk/wp-content/uploads/2018/04/Gordon-Anthony-Devolution-Brexit-and-the-Sewel-Convention-1.pdf>.
- BBC. 2019. “NI survey suggests 50% neither unionist nor nationalist”. *BBC News*, June 20, 2019. Accessed October 15, 2021. <https://www.bbc.co.uk/news/uk-northern-ireland-48702235>.
- BBC. 2021a. “Brexit: Unionist parties to join NI Protocol legal challenge” *BBC News*, February 21, 2021. Accessed October 15, 2021. <https://www.bbc.co.uk/news/uk-northern-ireland-56148441>.
- Campbell, John. 2021. “Corporation tax: Stormont continues to face taxing issues”, *BBC News*, October 2, 2021. Accessed October 15, 2021. <https://www.bbc.co.uk/news/uk-northern-ireland-58765443>.
- Bew, Paul, Peter Gibbon and Henry Patterson. 2002. “Northern Ireland 1921–2001: Political Forces and Social Classes”. London: Serif Books.
- Black, Rebecca. 2021. “Unionists split over DUP plan to collapse Stormont”. *Belfast Telegraph*, September 9, 2021. Accessed October 15, 2021. <https://www.belfasttelegraph.co.uk/news/northern-ireland/unionists-split-over-dup-plan-to-collapse-stormont-40835440.html>.
- Bosi, Lorenzo. 2008. “Explaining the Emergence Process of the Civil Rights Protest in Northern Ireland (1945–1968): Insights from a Relational Social Movement Approach”. *Journal of Historical Sociology* 21(2-3): 242–71.
- Breen, Suzanne. 2021. “Edwin Poots facing electoral challenge as support for DUP falls to 16%”. *Belfast Telegraph*, May 22, 2021. Accessed October 15, 2021. <https://www.belfasttelegraph.co.uk/news/northern-ireland/edwin-poots-facing-electoral-challenge-as-support-for-dup-falls-to-16-40455531.html>.
- British Irish Council. n.d. “About the Council”. Accessed October 15, 2021. <https://www.britishirishcouncil.org/about-council>.
- Coakley, John. 2008. “Ethnic competition and the logic of party system transformation”. *European Journal of Political Research* 47(6): 766–93.
- Coakley, John. 2017. “Adjusting to partition: from irredentism to ‘consent’ in twentieth-century Ireland”. *Irish Studies Review* 25(2): 193–214.
- Coakley, John and John Garry. 2016. “Northern Ireland: the challenge of public opinion”. Queen’s Policy Engagement. Accessed October 15, 2021. <http://qppl.qub.ac.uk/public-opinion-challenge-ni/>.
- Coakley, John and Jennifer Todd. 2020. *Negotiating a Settlement in Northern Ireland, 1969-2019*. Oxford: Oxford University Press.

- Department of Foreign Affairs. 2017. “Passport and Citizenship by Descent Applications from Northern Ireland and Great Britain in 2017”, Government of Ireland. Accessed October 15, 2021. <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2018/january/passport-citizenship-figures-2017/>.
- Dickson, Brice. 2018. *Law in Northern Ireland*. London: Bloomsbury.
- Dickson, Brice and Brian Gormally (eds). 2015. “Human Rights in Northern Ireland: The CAJ Handbook”. Oxford: Hart Publishing.
- Dickson, Brice and Conor McCormick. 2020. “Northern Ireland Dimensions to the First Decade of the United Kingdom Supreme Court”. *The Modern Law Review* 83(6): 1133–67.
- European Council. 2017. “Directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union”, May 22, 2017. Accessed October 15, 2021. <https://www.consilium.europa.eu/media/21766/directives-for-the-negotiation-xt21016-ad01re02en17.pdf>.
- European Parliament, 2021. “Northern Ireland PEACE programme”. Accessed October 15, 2021. <https://www.europarl.europa.eu/factsheets/en/sheet/102/northern-ireland-peace-programme>.
- Evans, Adam. 2020. “A Tale as Old as (Devolved) Time? Sewel, Stormont and the Legislative Consent Convention”. *The Political Quarterly* 91(1): 165–72.
- Evershed, Jonathan and Mary C. Murphy. 2021. “An bhfuil ár lá tagtha? Sinn Féin, special status and the politics of Brexit”. *The British Journal of Politics and International Relations*. Accessed October 15, 2021. <https://journals.sagepub.com/doi/full/10.1177/13691481211026153>.
- Gillespie, Gordon. 1998. “The Sunningdale Agreement: lost opportunity or an agreement too far?” *Irish Political Studies* 13(1): 100–14.
- Ginty, Roger, Mac Rick Wilford, Lizanne Dowds and Gillian Robinson. 2001. “Consenting Adults: The Principle of Consent and Northern Ireland’s Constitutional Future”. *Government and Opposition* 36(4): 472–92.
- Gormley-Heenan, Cathy and Arthur Aughey. 2017. “Northern Ireland and Brexit: Three effects on ‘the border in the mind’”. *The British Journal of Politics and International Relations* 19(3): 497–511.
- Gormley-Heenan, Cathy. and Jonny Byrne. 2012. “The Problem with Northern Ireland’s Peace Walls”. *Political Insight* 3(3): 4–7.
- Gray, Ann Marie, et al. 2018. “Northern Ireland Peace Monitoring Report”. Ulster University, no. 5/2018. Accessed October 15, 2021. <https://www.community-relations.org.uk/sites/crc/files/media-files/NIPMR-5.pdf>.
- Guelke, Adrian. 2012. “The USA and the Northern Ireland Peace Process”. *Ethnopolitics* 11(4): 424–38.
- Hancock, Landon. E. 2011. “There is No Alternative: Prospect Theory, the Yes Campaign and Selling the Good Friday Agreement”. *Irish Political Studies* 26(1): 95–116.
- Haughey, Sean. 2020. “Back to Stormont: The New Decade, New Approach Agreement and What it Means for Northern Ireland”. *The Political Quarterly* 91(1): 134–40.

- Hayward, Katy. 2009. *Irish nationalism and European integration: The official redefinition of the island of Ireland*. Manchester: Manchester University Press.
- Hayward, Katy. 2020. “The 2019 General Election in Northern Ireland: the Rise of the Centre Ground?” *The Political Quarterly* 91(1): 49–55.
- Hayward, Katy, David Phinnemore and Milena Komarova. 2020. “Anticipating and Meeting New Multilevel Governance Challenges in Northern Ireland after Brexit”, ESRC UK in a Changing Europe Initiative. Accessed October 15, 2021.
[https://pure.qub.ac.uk/files/205453746/UKICE Post Brexit Gov NI Report v9.pdf](https://pure.qub.ac.uk/files/205453746/UKICE_Post_Brexit_Gov_NI_Report_v9.pdf).
- Hearty, Kevin. 2015. “The Great Awakening? The Belfast Flag Protests and Protestant/Unionist/Loyalist Counter-memory in Northern Ireland”. *Irish Political Studies* 30(2): 157–77.
- Hume, John. 1986. “A new Ireland – the acceptance of diversity”. *The Irish Times*, September 13, 1986.
- Institute for Government. 2020a. “Explainers: Barnett formula”. Accessed October 15, 2021.
<https://www.instituteforgovernment.org.uk/explainers/barnett-formula>.
- Institute for Government, 2020b. “Explainers: Devolution: Joint Ministerial Committee”. Accessed October 15, 2021.
<https://www.instituteforgovernment.org.uk/explainers/devolution-joint-ministerial-committee>.
- Institute for Government. 2020c. “Explainers: Tax and devolution”. Accessed October 15, 2021.
<https://www.instituteforgovernment.org.uk/explainers/tax-and-devolution>.
- Jeffery, Charlie. 2007. “The Unfinished Business of Devolution: Seven Open Questions”. *Public Policy and Administration* 22(1): 92–108.
- Kornprobst, Markus. 2008. *Irredentism in European Politics: Argumentation, Compromise and Norms*. Cambridge: Cambridge University Press.
- Maillot, Agnès. 2005. *New Sinn Féin: Irish Republicanism in the Twenty-First Century*. Abingdon: Routledge.
- McAlinden, Anne-Marie and Clare Dwyer (eds). 2015. *Criminal Justice in Transition: The Northern Ireland Context*. Oxford: Hart.
- McCall, Cathal. 2018. “Brexit, Bordering and Bodies on the Island of Ireland”. *Ethnopolitics* 17(3): 292–305.
- McClements, Freya. 2021. “DUP warns it will halt cross-border activity linked to NI protocol”. *The Irish Times*, February 2, 2021. Accessed October 15, 2021.
<https://www.irishtimes.com/news/politics/dup-warns-it-will-halt-cross-border-activity-linked-to-ni-protocol-1.4474537>.
- McCrudden, Christopher. 2017. “The Good Friday Agreement, Brexit, and Rights”, Royal Irish Academy–British Academy Brexit Policy Discussion Paper, Accessed October 15, 2021.
<https://www.thebritishacademy.ac.uk/publications/europe-good-friday-agreement-brexit-and-rights/>.
- McCrudden, Christopher and Daniel Halberstam. 2017. “Miller and Northern Ireland: A Critical Constitutional Response”. *The UK Supreme Court Yearbook*, Volume 8: 299–343.

- McEvoy, Kieran. and John Morison. 2002. “Beyond the ‘Constitutional Moment’: Law, Transition, and Peacemaking in Northern Ireland”. *Fordham International Law Journal* 26(4): 961–95.
- McEwen, Nicola. 2017. “Still better together? Purpose and power in intergovernmental councils in the UK”. *Regional & Federal Studies* 27(5): 667–90.
- McEwen, Nicola. 2020. “Negotiating Brexit: power dynamics in British intergovernmental relations”. *Regional Studies* 55(9): 1–12.
- Mitchell, Claire. 2006. *Religion, Identity and Politics in Northern Ireland: Boundaries of Belonging and Belief*. Abingdon: Routledge.
- Mitchell, Paul, Geoffrey Evans and Brendan O’Leary. 2009. “Extremist Outbidding in Ethnic Party Systems is Not Inevitable: Tribune Parties in Northern Ireland”. *Political Studies* 57 (2): 397–421.
- Murphy, Mary C. 2014. *Northern Ireland and the European Union: The dynamics of a changing relationship*. Manchester: Manchester University Press.
- Murphy, Mary C. 2018. *Europe and Northern Ireland's Future: Negotiating Brexit's Unique Case*. Newcastle upon Tyne: Agenda Publishing.
- Murphy, Mary C. and Jonathan Evershed. 2020. “Between the devil and the DUP: the Democratic Unionist Party and the politics of Brexit”. *British Politics* 15: 456–77.
- Nagle, John. 2018. “Between Conflict and Peace: An Analysis of the Complex Consequences of the Good Friday Agreement”. *Parliamentary Affairs* 71(2): 395–416.
- Nash, Catherine, Bryonie Reid and Brian Graham. 2016. *Partitioned Lives: The Irish Borderlands*. Abingdon: Routledge.
- Northern Ireland Life and Times. 1998. “Community Relations: Are Protestants/Catholics treated better by the police?”. Accessed October 15, 2021. https://www.ark.ac.uk/nilt/1998/Community_Relations/RELBETT.html.
- Northern Ireland Life and Times. 2020a. “Will relations between Protestants and Catholics be better in 5 years time?”. Accessed October 15, 2021. https://www.ark.ac.uk/nilt/2020/Community_Relations/RLRELFUT.html.
- Northern Ireland Life and Times. 2020b. “Are relations between Protestants and Catholics better now than 5 years ago?”. Accessed October 15, 2021. https://www.ark.ac.uk/nilt/2020/Community_Relations/RLRELAGO.html.
- Northern Ireland Statistics and Research Agency. 2001. “Northern Ireland Census 2001: Key Statistics Report”. Accessed October 15, 2021. <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/2001-census-results-key-statistics-report-press-release.pdf>.
- Northern Ireland Statistics and Research Agency, 2011. “Census 2011: Key Statistics for Northern Ireland” Accessed October 15, 2021. <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/2011-census-results-key-statistics-statistics-bulletin-11-december-2012.pdf>.
- North-South Ministerial Council. n.d. “About the NSMC”. Accessed October 15, 2021. <https://www.northsouthministerialcouncil.org/>.

- Office for National Statistics. 2021a. “Labour market in the regions of the UK: October 2021” Accessed October 15, 2021. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/regionallabourmarket/october2021>.
- Office for National Statistics. 2021b. “Regional economic activity by gross domestic product, UK: 1998 to 2019” Accessed October 15, 2021. <https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/regionaleconomicactivitybygrossdomesticproductuk/1998to2019>.
- O’Leary, Naomi. 2021. “EU pauses legal action against UK over Northern Ireland protocol”, *The Irish Times*, July 27, 2021. Accessed October 15, 2021. <https://www.irishtimes.com/news/politics/eu-pauses-legal-action-against-uk-over-northern-ireland-protocol-1.4632070>.
- Page, Chris. 2019. “Northern Ireland abortion and same-sex marriage laws change” *BBC News*, October 22, 2019. Accessed October 15, 2021. <https://www.bbc.co.uk/news/uk-northern-ireland-50128860>.
- Phinnemore, David. 2020. “Northern Ireland: A ‘Place Between’ in UK–EU Relations?” *European Foreign Affairs Review* 25(4): 631–50.
- Ryan, Bernard. 2001. “The Common Travel Area between Britain and Ireland”. *The Modern Law Review* 64(6): 831–54.
- Scottish Parliament. 2021. “Common Frameworks in the new Parliamentary Session”. Accessed October 15, 2021. <https://spice-spotlight.scot/2021/06/04/common-frameworks-in-the-new-parliamentary-session/>.
- Smyth, Marie. 2006. “Lost Lives: Victims and the Construction of ‘Victimhood’ in Northern Ireland”. In *A farewell to arms? Beyond the Good Friday Agreement* edited by Michael Cox, Adrian Guelke and Fiona Stephen, 6–23. Manchester: Manchester University Press.
- Tannam, Etain. 2001. “Explaining the Good Friday Agreement: A Learning Process”. *Government and Opposition* 36(4): 493–518.
- The Economist. 2021. “Northern Ireland’s schools are slowly becoming less segregated”. Accessed October 15, 2021. <https://www.economist.com/britain/2021/07/29/northern-irelands-schools-are-slowly-becoming-less-segregated>.
- Todd, Jennifer. 2017. “Contested Constitutionalism? Northern Ireland and the British–Irish Relationship since 2010”. *Parliamentary Affairs* 70(2): 301–21.
- Tonge, Jonathan. 2002. *Northern Ireland: Conflict and Change*. Abingdon: Routledge.
- Tonge, Jonathan. 2020. “Beyond Unionism versus Nationalism: the Rise of the Alliance Party of Northern Ireland”. *The Political Quarterly* 91(2): 461–66.
- UK government. 2012. Devolution: Memorandum of Understanding and Supplementary Agreement between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee”. Accessed October 15, 2021. <https://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement>.
- UK and Irish governments. 1993. “Joint Declaration by the UK and Irish governments (Downing Street Declaration)”, December 15, 1993. Accessed October 15, 2021.

<https://www.dfa.ie/media/dfa/alldfawebstimedia/ourrolesandpolicies/northernireland/peace-process--joint-declaration-1993.pdf>.

- Utz, Patrick. 2019a. “Europeanizing the Party Politics of Minority - Kin-State Relations: Evidence from Northern Ireland and South Tyrol”. *Nationalism and Ethnic Politics* 25(4): 363–82.
- Utz, Patrick. 2019b. “Half in, half out? Sinn Féin’s ‘all-Ireland’ strategy in the European Elections”. Eureka! Blog. Accessed October 15, 2021. <https://blogs.eurac.edu/eureka/half-in-half-out-sinn-feins-all-ireland-strategy-in-the-european-elections/>.
- Walsh, Dawn. 2018. *Territorial Self-Government as a Conflict Management Tool*. Cham: Springer.
- Wolff, Stefan. 2001. “Context and Content: Sunningdale and Belfast Compared”. *Aspects of the Belfast Agreement* edited by Richard Wilford, 11–27. Oxford: Oxford University Press.
- Young, Alasdair R. 2015. “The Single Market: From Stagnation to Renewal”. *Policy-Making in the European Union* edited by Helen Wallace, Mark A. Pollack, and Alasdair R. Young, 115–40. Oxford: Oxford University Press.

List of abbreviations

CTA – Common Travel Area
DUP – Democratic Unionist Party
ECHR – European Convention on Human Rights
EU – European Union
GFA – Good Friday Agreement
IRA – Irish Republican Army
JMC – Joint Ministerial Committee
JMC(D) – Joint Ministerial Committee Domestic
JMC(E) – Joint Ministerial Committee Europe
JMC(EN) – Joint Ministerial Committee EU Negotiations
JMC(P) – Joint Ministerial Committee Plenary
MLA – Member of the Legislative Assembly
NSMC – North-South Ministerial Council
PSNI – Police Service of Northern Ireland
SDLP – Social Democratic and Labour Party
UK – United Kingdom
UUP – Ulster Unionist Party

About the author

Patrick Utz is a research associate at the Department of Geography and Earth Sciences at Aberystwyth University. His research interests are minority nationalist parties, irredentism and European integration. He holds a PhD in Politics from the University of Edinburgh. As part of his thesis, Patrick compared the effects of European integration on cross-border nationalism on the island of Ireland and in Tyrol/South Tyrol. His publications include “Europeanizing the party politics of minority – kin-state relations: Evidence from Northern Ireland and South Tyrol” (2019), *Nationalism and Ethnic Politics* 25(4): 363-382; and “Federal reforms in Austria: is now the time to overcome gridlock?” (2018), University College London-The Constitution Unit Blog.