

# Integration and Disintegration

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In our analysis below, we examine the convergent and divergent paths of Ireland and the UK on the theme of integration and disintegration in three stages. The first considers the constitutional context and framework within which each of the two countries chose to embark on the path of European integration by acceding to the EEC in the early 1970s. The second examines several key policy choices made by the two states along a continuum between integration and disintegration, as part of a more differentiated, post-Maastricht EU. The final stage examines the implications of Brexit for the UK and Ireland following Britain's departure from the EU.

## Constitutional divergence from the outset

The accession of the UK and Ireland in 1973 is often described as a moment that brought two similar common law jurisdictions into a Community legal order that hitherto had engaged only with the civilian legal systems of its founding Member States. Yet that broad similarity at the moment of embarking on the path of European integration belies a deeper constitutional divergence between the UK and Ireland. While the UK has an unwritten constitution embedded in common law principles, including the principle of parliamentary sovereignty, Ireland is more similar to its continental neighbours in having equipped itself in 1922 and 1937 with a written Constitution after declaring independence from British rule. Jettisoning the British version of parliamentary/executive sovereignty, the Irish Constitution is based on the notion of [popular sovereignty](#). These divergent constitutional foundations meant that from the earliest moment of their membership of the European Communities, each state managed and mediated its relationship with European integration in rather different and distinctive ways.

One of the clearest manifestations of this constitutional divergence has been in the use of referendums on European integration in the two countries. Following the judgment of the Irish Supreme Court in [Crotty](#), the Irish Constitution was interpreted as requiring key EU treaty changes to be the subject of a constitutional amendment, and constitutional amendments in Ireland require approval by means of a popular referendum. Thereafter, the Irish government generally followed the practice of [holding a referendum for most EU treaty changes](#), which famously resulted in the initial rejection (but later acceptance, following a second plebiscite) of both the Nice and the Lisbon treaties. By contrast, the UK never held a referendum prior to the approval of an EU treaty, and [the referendums held in the UK in 1975 and 2016](#) were expressly framed as existential plebiscites on UK membership of the European Communities or Union. Notably, however, the UK drew from the experiences of other EU jurisdictions and eventually equipped itself, in its (now repealed) [European Union Act 2011](#), with a mechanism for mandating referendums for future European integration events. However, not least because of the difficulties encountered in Ireland with the referendums on the Nice and Lisbon Treaties, the subsequent

decline in resort to EU treaty change as a vehicle for European integration ensured that no British referendums were actually triggered by the 2011 Act. The Brexit referendum in 2016 was a political choice and not a constitutionally or legislatively mandated event.

It might therefore be argued that the UK's system of parliamentary sovereignty, which is typically the handmaiden of executive power, failed to provide a robust mechanism for ongoing popular legitimation of the UK's EU membership. Ireland's provision for referendums in its Constitution, in comparison, reflected a deliberate choice to reject the British system of parliamentary sovereignty in favour of popular sovereignty. And this choice may have helped, in the context of EU membership, to generate ongoing public awareness of and education about the European integration process, as well as a mechanism for expressing popular disquiet or support.

## **Convergence and divergence in a differentiated post-Maastricht EU**

What the UK and Ireland joined in 1973 was principally a Common Market. This pursuit of enhanced conditions for free trade built upon but also superseded a joint initiative in the form of the Anglo Irish Trade Agreement of 1965. As will be discussed later, this type of bilateral economic (and, to some extent, political) cooperation across the two islands and within the island of Ireland, was possible prior to EU membership in a way that could not be easily reproduced once the UK left the EU. Membership of the Common Market, however, and the willingness to accept the discipline of free movement tied both countries into a wider and deeper process of regional economic integration. The subsequent Internal Market programme also saw both countries bound by a growing body of harmonised rules and regulatory standards, a fact that also became important for the all-Ireland economy after Brexit.

Beneath this level of legal and instrumental convergence, however, membership of the Common/Internal Market came to mean different things for both countries. EU membership enabled Ireland to gradually lessen its economic dependence on the UK as a destination for Irish-produced goods, and later, for financial services. And despite the initial rejections of the Nice and Lisbon Treaties by referendum, as well as a lively domestic debate on the ratification of the Maastricht Treaty, the Irish political and social classes on the whole welcomed and engaged actively in the deepening process of European integration over the decades. For the UK, however, 'market membership' remained the dominant social and political understanding of EU membership. Indeed, post-Maastricht developments – the move from Community to Union, EU citizenship, the expansion beyond primarily market integration to areas of foreign and security policy as well as justice and home affairs, the development of strong EU human rights instruments – were viewed in the UK as bringing about a fundamental, and, for many, a deeply problematic change in the character of European integration. The British political class struggled in subsequent years with these profound underlying tensions, notwithstanding parliamentary approval for successive treaty changes, and ostensibly for the deepening process of integration.

The post-Maastricht period of European integration also heralded an era of greater differentiation and 'variable geometry'. In this respect, Ireland and the UK also diverged somewhat. The UK at the time of the Maastricht Treaty chose to opt out of the EU's new social policy chapter, an opt-out which was later reversed by the Amsterdam Treaty after a change in government, although EU employment policy and labour regulation remained divisive within British politics. Even more consequentially, the UK opted not to participate fully in Economic and Monetary Union, choosing to remain outside the Eurozone. By contrast, Ireland participated fully in EU social policy as well as Economic and Monetary Union. These divergent choices set the UK and Ireland on quite different paths as far as their degree of integration into the developing European polity was concerned.

EMU left fiscal and economic policies in the hands of the Member States. Yet this apparent autonomy is subject to the discipline of a complex system of economic and fiscal governance, whose application and enforcement differentiates between Eurozone insiders and outsiders. The implications of Ireland's Eurozone membership for the conduct of its fiscal and economic policies became painfully clear in the context of the global financial crisis and the subsequent Eurozone crisis. Conditionality requirements which were imposed as part of a package of financial support to Ireland, together with enhanced EU budgetary supervision, highlighted how Eurozone membership could expose core state powers to the influence of the [Troika](#) – i.e. the European Commission, the European Central Bank and the International Monetary Fund. The nature and extent of that influence provoked domestic contestation and resistance in Ireland, although not ultimately an existential crisis about EU membership, particularly because Ireland exited the program relatively [rapidly](#) even if [far from unscathed](#). Conversely, despite being outside the Eurozone, the domestic politics of austerity voluntarily adopted in the UK in the wake of the financial crisis played a part in the Brexit debate, since many UK voters welcomed what they saw as an opportunity to stop paying into an EU budget, and to spend more money at home.

One particular area of 'convergent differentiation' post-Maastricht in which Ireland chose to follow the UK was in the decision to opt out from the Schengen system, the area of free EU-wide travel without internal border control. Relatedly, Ireland followed a similar path to the UK in maintaining a semi-detached position with regard to Justice and Home Affairs whereby both jurisdictions could opt-in to specific EU measures. The reasons for Ireland's convergence with the UK as regards these aspects of EU policy stem from the complex and closely intertwined history of the two jurisdictions, and more particularly from the [Common Travel Area](#) which was established between them in 1923 following Ireland's assertion of independence.

## **Territorial integrity, integration and disintegration post-Brexit**

The 2016 Brexit referendum and the subsequent UK withdrawal from the European Union produced a rapid and steep divergence in the trajectories of the UK and Ireland as regards European integration. Indeed, the UK's departure from the EU

has produced, and is the product of, a politics of disruption that aims to critique the purpose and benefits of increased European integration.

One interesting dimension of the post-Brexit integration/disintegration effect worth highlighting is the [impact on territorial integrity within the two jurisdictions](#). Apart from the clear differences in the voting preferences of the populations of Northern Ireland and Scotland (each of which voted by a majority to remain in the EU) as compared with England and Wales (each of which voted by a majority to leave), in the Brexit referendum, the aftermath of the Brexit referendum has renewed interest in [the case for Scottish independence](#), despite the [constitutional hurdles](#). Yet it is not clear that either this value-schism within the UK or the popularity of the pro-EU pro-independence Scottish National Party has proved sufficient to generate support for independence from the rest of the UK amongst a majority of Scottish voters.

Territorial integrity has particular resonance in the relationship between the UK and Ireland given the complex status of Northern Ireland. Having remained a part of the UK rather than becoming part of the newly independent Irish state following the partition of the island of Ireland in 1922, Northern Ireland became the locus of bitter and violent conflict throughout the latter decades of the 20<sup>th</sup> century between the predominantly Catholic community which sought reunification with Ireland and the predominantly Protestant community which sought to remain part of the United Kingdom. A peace agreement was eventually reached in 1998 in the form of the Belfast/Good Friday Agreement, which resulted in the dismantling of the controversial border between Ireland and Northern Ireland, and a complex set of governing arrangements for Northern Ireland. The disappearance of the border also helped promote the [all-Ireland economy](#) that had been developing in the context of European integration.

The exit of the UK from the European Union however threatened to destabilize not just the fragile peace that had taken hold since the Good Friday agreement, since it seemed probable that a border of some kind would be re-erected, but also to disrupt that developing all-Ireland economy which benefited from a single set of EU regulatory rules north and south, and the absence of any tariffs or customs formalities. The [Northern Ireland Protocol](#) signed between the UK and the EU as part of the UK's exit negotiations attempted to avert these twin risks by providing that there would be no hard border and that Northern Ireland would effectively remain part of the EU's regulatory single market. This arrangement would make the continuation of 'frictionless trade' between North and South more likely, although – controversially – it required the introduction of inspection checks between Great Britain and Northern Ireland.

While tensions and challenges to the operation of the Northern Ireland Protocol, and negotiations on its future have continued, Brexit has at the same time energised the debate on a reunification of Northern Ireland and Ireland, particularly in the Irish Republic. Sinn Fein, which in very recent years became the largest political party in both Northern Ireland and Ireland, has long espoused a policy of reunification, and there have been lively debates on whether or not a referendum should be held. In short, while neither [Scottish independence nor Irish reunification](#) seem likely to be

seriously pursued in the short term, there is no doubt that Brexit has fuelled debates on a United Ireland and on Scottish independence. In other words, while the UK's exit from the EU has put in question the territorial unity of Scotland and England within the UK, it has also put back on the table the question of territorial unification of the island of Ireland.

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