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Remnants Of The Troubles: How History And A Teleological Treaty Interpretation Breathe Life Into The Stormont Brake

CONNOR M. LEMMA*

I. INTRODUCTION

On January 29, 2020, the European Parliament voted to approve the United Kingdom's withdrawal from the European Union,¹ finalizing a complex series of negotiations that perplexed interested parties around the world.² As countries intricately connected to the United Kingdom,³ Ireland and Northern Ireland were particularly concerned with Brexit's impact.⁴ Pre-Brexit and post-Troubles, the United Kingdom, Northern Ireland, and Ireland co-existed in relative

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1. European Union Press Release, Brexit deal approved by the European Parliament (Jan. 29, 2020).

2. *'Something resembling hell': How does the Rest of the World View the UK?*, THE GUARDIAN (Aug. 7, 2019, 5:00 AM), <https://www.theguardian.com/politics/2019/aug/04/how-does-the-rest-of-the-world-currently-view-the-uk-brexit-boris-johnson>.

3. *See infra* Part III.

4. The Northern Ireland First Minister was quoted as saying "This is the start of a new era in the relationship between the UK and the EU and in Northern Ireland we will want to maximize the opportunities the new arrangements provide for our local economy." The Irish Foreign Minister was quoted as saying "Today we finally get certainty that there is a trade deal that I think protects Ireland in the circumstances as well we could possibly have hoped." World Reacts to UK-EU post-Brexit Trade Deal, AL JAZEERA (Dec. 24, 2020, 10:27 AM) <https://www.aljazeera.com/news/2020/12/24/brexit-world-reacts-to-uks-trade-deal-with-eu>.

economic peace, as all three countries had access to the European Market.⁵ But, with the United Kingdom's exit, Northern Ireland would potentially lose access to the European market, which prompted fears that a hard border would return between Northern Ireland and Ireland even though the initial treaty documents specified that it was the signatories' hope to avoid a return to the Troubles-era hard border.⁶

The Protocol on Ireland and Northern Ireland could not predict nor solve all the problems posed by Brexit.⁷ The Windsor Framework (Framework), signed in February 2023, addresses, among other subjects, the democratic deficit created by Northern Ireland being subject to European Union (EU) laws while, at the same time, being part of the United Kingdom which is no longer a part of the EU.⁸ To do so, the Framework (Framework) includes the Stormont Brake (Brake), a mechanism that allows 30 Members of the Legislative Assembly (MLAs) in Northern Ireland to block the application of new European Union laws that would otherwise be binding on Northern Ireland, even though Northern Ireland is no longer a member of the EU.⁹

The Framework outlines the procedural requirements necessary for the MLAs to pull the Brake and block the application of certain new EU regulations.¹⁰ However, it lacks a substantive explanation of the substance of the effect of any EU law, explaining that the MLAs can only pull the break when the new EU goods rule will impact the “*day-to-day lives of businesses and citizens.*”¹¹

Although the Framework sufficiently outlines the procedural requirements, the substantive requirements are quite vague.¹² The lack

5. *See infra* Part III.

6. *See infra* Part III; *see also* Protocol on Ireland/Northern Ireland, 24 Jan. 2020, Eur.-Gr. Brit., GR. BRIT. TS No. 3 (2020) (Cd. 219 Vol. 2) The Protocol on Ireland/Northern Ireland emphasizes that the parties hope to avoid a hard border and the “unique circumstances on the Island of Ireland. . . .”

7. *See infra* Part III.

8. The Windsor Framework provides for a change “caused by the old Protocol.” It includes the “Stormont Brake, [which] is embedded at the heart of the treaty, reopening and rewriting the dynamic alignment provision in Article 13, so that it *provides a firm guarantee of democratic oversight*, and a sovereign veto for the United Kingdom on damaging new goods rules.” The Windsor Framework: A New Way Forward, ¶ 7, 51, 27 Feb. 2023, United Kingdom-European Union (Cd. 806) (available at https://assets.publishing.service.gov.uk/media/63fccf07e90e0740d3cd6ed6/The_Windsor_Framework_a_new_way_forward.pdf) (emphasis added).

9. *Id.* ¶ 60-68.

10. *Id.*

11. *Id.* ¶ 5 (emphasis added).

12. Among pundits and academics, there is confusion as to the implementation of the possible substantive elements of the Stormont Brake. For example, Mel Kenny writes “the

of guidance has been noted by journalists and academics, but there has been no in-depth analysis of the substantive requirements of the Brake.¹³ To understand the Brake's practical and substantive implementation, it is necessary to understand different theories of treaty interpretation as outlined by the Vienna Convention on Treaty Interpretation and how they relate to the rich history of Northern Ireland.¹⁴

This article first provides a brief overview of treaty interpretation and suggests a teleological treaty interpretation strategy as it relates to the history of Northern Ireland.¹⁵ Next, this article delineates the relevant history between the United Kingdom, Northern Ireland, and Ireland that provide insight necessary for a teleological treaty interpretation strategy.¹⁶ This article next explains the Windsor Framework and the Stormont Brake.¹⁷ Finally, this article analyzes new EU regulations and a postulates subjects of hypothetical regulations that could be subject to the Brake, and the potential uses of the Brake as understood through *effet utile*, the Brussels Effect, and advocates for a teleological framework.¹⁸

This article attempts to provide insight for interpreting parties of the Stormont Brake—MLAs, interested parties, and arbiters—when they attempt to determine what may constitute a significant impact for communities of Northern Ireland that are liable to persist.

meanings of 'impacts,' 'everyday life' and even the relevant 'communities' under Article 13(3a) [of the Windsor Framework] are all terms whose scope can be contested." Mel Kenny, *The Windsor Framework: Finding a New Way Forward for EU/UK Relations?*, JEAN-MONNET-SAR (Mar. 3, 2023), https://jean-monnet-saar.eu/?page_id=261372. Similarly, Billy Melo Araujo writes that "it is difficult to imagine many scenarios where the amendment or replacement of an EU act will . . . impact the everyday lives of communities in [Northern Ireland] in a manner that is liable to persist." Billy Melo Araujo, *The Windsor Framework and its Impact for Northern Ireland and EU-UK Relations* (Dublin City Univ., Working Paper N. 03/2023, 2023)..

13. See, e.g., *EY Indirect Tax*, 34 J. INT'L TAX'N 15, 19 (May 2023); see also Owen Robinson, Robert Gardener, Auriane Negret & James Furneaux, *Despite President Biden's Encouragement, a Key Aspect of the Windsor Framework Remains on Hold*, HOGAN LOVELLS ENGAGE: LEGAL INSIGHT AND ANALYSIS (Apr. 13, 2023), <https://www.engage.hoganlovells.com/knowledgeservices/news/despite-president-bidens-encouragement-a-key-aspect-of-the-windsor-framework-remains-on-hold>.

14. See *infra* Part IV.

15. See *infra* Part II.

16. See *infra* Part III.

17. See *infra* Part III Section D.

18. See *infra* Part IV.

II. TREATY INTERPRETATION

The Vienna Convention on the Law of Treaties governs the interpretation of treaties between signatories.¹⁹ Article 31 first directs the tribunals to the “ordinary meaning” of the terms, including preambles, annexes, agreements regarding the conclusion of the treaty, and related agreements.²⁰ If the meaning of the treaty is not immediately clear after inquiring into the ordinary meaning of the terms, then Article 32 directs the interpreting body to utilize supplementary means of interpretation.”²¹

In response to the Vienna Convention on the Law of Treatises, commentators have identified three treaty interpretation methods: the textual approach, the subjective approach, and the teleological approach.²² Notably, these theories are not listed in any hierarchical order—there is no preferred treaty method.²³ Thus, rather than having to follow a hierarchical interpretation strategy, arbiters and interested parties must understand that the practical implementation of each treaty interpretation method may differ depending on the subject matter of the treaty.²⁴ These types of treaty interpretations as identified by commentators and the European Court of Human Rights have various uses that can be implemented in different scenarios.²⁵

The subjective approach attempts to understand the actual intent of the parties.²⁶ This theory is underpinned by the history of the negotiations and attempts to interpret the documents as aligned with the intention of the parties,²⁷ rather than commonly used terminology.²⁸

A textualist simply asks “what did the parties say?”²⁹ However, if the expressions of the parties are ambiguous, then the arbiter or

19. Vienna Convention of the Law of Treatises, May 23, 1969.

20. Vienna Convention of the Law of Treatises, May 23, 1969, art. 31.

21. Vienna Convention of the Law of Treatises, May 23, 1969, art. 32.

22. William J. Moon, *Essential Security Interests in International Agreements*, 15 J. INT'L ECON. L., 481, 492 (2012).

23. Francis C. Jacobs, *Varieties of Approach to Treaty Interpretation: With Special Reference to the Draft Convention on the Law of Treaties Before the Vienna Diplomatic Conference*, 18 J. INT'L AND COMPAR. L. Q., 318, 319 (1969).

24. For example, in international investment agreements, certain terms have expected meanings that protect third party beneficiaries that depend on the language for certainty in investments. Moon, *supra* note 22, at 483.

25. See discussion *supra* Section II Part D.

26. Jacobs, *supra* note 23, at 319.

27. *Id.*

28. Moon, *supra* note 22, at 492.

29. Jacobs, *supra* note 23, at 319.

interpreting entity may consult extrinsic sources to interpret the treaty.³⁰ Textual approaches to interpreting treaties may also be divided into two distinct subsets: dictionary meaning and ordinary usage.³¹

The final treaty interpretation theory embraces the entirety of the meaning of the terms within the context from which they were agreed.³² The Vienna Convention implicitly supports the teleological approach as a doctrinal matter by directing a tribunal to understand a term “in light of its object and purpose.”³³

A. *Effet Utile and the Brussels Effect*

The three aforementioned interpretation strategies are not the only treaty interpretation tools. *Effet utile* and the Brussels Effect adds to the teleological treaty interpretation by setting upper and lower limits, with *effet utile* setting the lower limit, whereas the Brussels Effect establishes the upper limit for what can be considered a “significant impact that is liable to persist.”

On one end of the treaty interpretation spectrum is a doctrine called *effet utile*, or the principle of effectiveness. The principle of effectiveness means that each treaty provision must have practical effect, rather than interpreting the provision in a manner that leaves it with no effect.³⁴ The principle of effectiveness applies to the Brake—pundits, politicians, and observers have consistently maintained that, in theory, the Brake is an emergency mechanism rather than a tool of common use.³⁵ Accordingly, to comply with the principle of effectiveness, the “substantial impact to everyday life” provision cannot be so limited to preclude any MLAs from ever pulling the Brake.³⁶

At the other end of the narrow treaty interpretation spectrum is the Brussels Effect.³⁷ The Brussels Effect provides a necessary

30. *Id.*

31. Moon, *supra* note 22 at n. 56 (“Ordinary meaning of terms for parties at interest to an investment treaty may deviate from lexicographical meanings, making it difficult to stick to the interpretation based on a dictionary.”).

32. *Id.* at 492.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*; see also *EY Indirect Tax*, 24 J. INT’L TAX’N 15 (May 2023) (“The brake will not be available for trivial reasons: there must be something ‘significantly’ different about a new rule, whether in its content or scope, and it will be necessary to show that it has a ‘significant impact to everyday life’ that is liable to persist.”).

37. Anu Bradford, *The Brussels Effect*, 107 NW. L. REV. 1 (2012).

framework for the ‘significant impacts’ portion of the Brake.³⁸ The Brussels Effect “sets the global rules across a range of areas, such as food, chemicals, competition, and the protection of privacy.”³⁹ EU regulations govern food, chemicals, competition, and privacy—all subjects that touch everyday lives of citizens around the world and certainly in Northern Ireland.⁴⁰

B. How to Interpret the Windsor Framework

A teleological treaty interpretation best suits the Framework because the Framework is not a treaty frozen at one moment in time; instead, it is a product of over a century of historical conflicts, negotiations, and agreements.⁴¹ Unlike international investment treaties where non-signatory third parties rely on treaty texts in “reference to their ordinary meaning,”⁴² the Framework’s beneficiaries, in a narrow sense, are the MLAs who rely on the treaty language to decide whether an EU law or regulation will have a significant impact on the people of Northern Ireland that is liable to persist.⁴³ Rather than outside investors relying on treaty terms to make sound investments, the MLAs need to understand the history between the UK, Ireland, and Northern Ireland, along with the objective and purpose of the Framework.⁴⁴ Understanding the Framework and the Brake within the scope of modern Irish history, and thus using a teleological treaty interpretation framework is the most appropriate way to understand the Framework and the Brake.⁴⁵ Furthermore, as the historical background will show that this network of proceeding treaties address significant human rights

38. *Id.*

39. *Id.* at 3.

40. Bradford lists makeup, cereal, software, privacy settings, interoffice phone directories, air conditioners, and Happy Meals as elements common to the everyday lives of Americans that are subject to EU regulations. *Id.* Some EU rules apply to companies around the world if (1) they have securities listed on a regulated secondary market in the European Union, (2) meet a certain EU revenue threshold, or (3) companies with European subsidiaries that meet certain requirements. *Id.*; See also Dieter Holger, *At Least 10,000 Foreign Companies to be Hit by the EU Sustainability Rules*, WSJ (Apr. 5, 2023, 4:46 AM), <https://www.wsj.com/articles/at-least-10-000-foreign-companies-to-be-hit-by-eu-sustainability-rules-307a1406>.

41. See *infra* Section IV Part B.

42. Moon, *supra* note 22, at 491.

43. See *infra* Section III Part D.

44. *Id.*

45. *Id.*

issues,⁴⁶ these human rights treaties are best understood by a teleological framework.⁴⁷

III. HISTORICAL BACKGROUND

Ireland and Northern Ireland have a complex history of occupation, partition, and instability. From the 17th century to the present day, remnants of British influence affect the daily lives of the citizens of both Ireland and Northern Ireland.

A. *Historical Context: Easter Rising to Bloody Sunday*

Tensions between Catholics and Protestants played a salient role in instability and violence between Northern Ireland and Ireland from the time of British occupation in the 17th century.⁴⁸ The Protestant communities in Northern Ireland migrated from Scotland after the British conquered the last remaining Irish community of Ulster in the 17th century.⁴⁹ Throughout the following centuries, the Protestant communities received preferential treatment from both private parties and the government, often to the Catholic community's detriment.⁵⁰ For example, first-born Catholics were not allowed to own property unless they converted to Protestantism—as a result, only 14% of available farmland was owned by Catholics.⁵¹ The industrial revolution intensified sectarian conflict as Protestants and Catholics alike rushed to Belfast to compete for jobs, resulting in intensified segregation of cities.⁵² These centuries of animosity fueled the tension between Irish Catholics and Irish Protestants, kindled by the UK's role in governing the island.

Such tensions led to the Easter Rising, when 1,250 Irishmen overtook buildings in Dublin, Ireland's capital city, on April 24,

46. *See infra* Section III.

47. *See, e.g., Interpretation of Human Rights Treaties*, Icelandic Human Rights Centre, <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/interpretation-of-human-rights-treaties>.

48. Douglass Woodwell, The "Troubles" of Northern Ireland: Civil Conflict in an Economically Well-Developed State, in 2 UNDERSTANDING CIVIL WAR: EUROPE, CENTRAL ASIA, AND OTHER REGIONS 161, 162, *available at* <http://www.jstor.com/stable/resrep02484.10>.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 163.

1916.⁵³ An announcement read at the steps of the Dublin City Center⁵⁴ stated, in part, that the “Republic guarantees religious and civil liberty, equal rights, and equal opportunities to all its citizens . . . cherishing all the children of the nation equally, and oblivious of the differences carefully fostered by an alien government, which have divided a minority from the majority in the past.”⁵⁵ The British government secretly court martialed the leaders of the rebellion and executed them.⁵⁶

Following the Easter Rising, the Irish rebellion established a provisional government in Dublin called *Dáil Éireann*.⁵⁷ The provisional government negotiated with the UK and reached an agreement that partitioned the island into Ireland and Northern Ireland, leaving Northern Ireland as a part of the British Commonwealth.⁵⁸

Ireland did not gain full independence from the UK until the passage of the Ireland Act in 1949, which declared “that the part of Ireland heretofore known as Erie ceased, as from the eighteenth day of April, nineteen hundred and forty-nine, to be a part of His Majesty’s dominions.”⁵⁹ The UK, however, “affirm[ed] the constitutional position and territorial integrity of Northern Ireland...”⁶⁰

The Ireland Act did not solve the tensions on the island.⁶¹ These tensions boiled over and escalated in the late 1960s, marking the beginning of the violent sectarian conflicts known as the “Troubles.”⁶² The British Army established a significant presence in Northern Ireland, with at least 25,700 British soldiers in Northern Ireland by 1972.⁶³

53. Matthew G. Rooks, *Toward a United Ireland? The Northern Ireland Peace Process and the Devolution of Powers from London to Belfast*, 39 GA. J. INT’L & COMPAR. L. 241, 245 (2010).

54. *Id.*

55. *The Proclamation of the Irish Republic*, NAT’L MUSEUM OF IR. (Apr. 24, 1916), <https://www.museum.ie/en-IE/Collections-Research/Collection/Resilience/Artefact/Test-3/fb71e3dc-2e95-4406-bc46-87d8d6b0ae5d>.

56. Rooks, *supra* note 53, at 245.

57. *Id.*

58. *Id.* at 246; *see also* Woodwell, *supra* note 48, at 163.

59. Ireland Act 1949, 12, 13 & 14 Geo. 6 c. 41 (Eng.).

60. *Id.*

61. Protestant leaders in Northern Ireland held onto power and enjoyed largely unopposed elections, and Catholic unemployment was twice that of Protestants. Woodwell, *supra* note 48, at 163.

62. Sarah Lyall, *British Soldiers Shut Down Operations in Northern Ireland*, N.Y. TIMES (July 31, 2007), <https://www.nytimes.com/2007/07/31/world/europe/31iht-belfast.4.6922728.html>.

63. Rooks, *supra* note 53, at 247.

The formal Army presence, Operation Banner, began on August 14, 1969, and ended July 31, 2007.⁶⁴

One of the most infamous moments during the Troubles occurred on January 30, 1972, when the British army shot into a civil rights march in Londonderry.⁶⁵ The violence, dubbed Bloody Sunday, represented just fourteen of the 3,000 estimated fatalities during “the Troubles.”⁶⁶ Bloody Sunday immediately captured the world’s attention, with the New York Times suggesting that Britain should completely take over the Northern Ireland government to “build conditions for serious negotiations among all involved parties about the future of the illstarred province.”⁶⁷ Following Bloody Sunday, the British Government assumed control over the Northern Ireland government.⁶⁸

Between Bloody Sunday and the Framework, Britain, Northern Ireland, and Ireland came to a variety of agreements to address the devolution of power and democratic deficit in Northern Ireland. These agreements culminated with one of the most significant moments in Northern Ireland, Irish, and British history: the Good Friday Agreement.⁶⁹ The agreements that span the Troubles to the Good Friday Agreement illuminate the issues that are of historic importance to the people of Northern Ireland and Ireland,⁷⁰ while at the same time providing context for the Framework and the Brake.⁷¹

B. Pre-Brexit Agreements

The Anglo-Irish Agreement was a 1985 agreement between Ireland and Britain that resulted in disapproval and disagreement from the Republicans and Unionists⁷² regarding the status of Northern Ireland.⁷³ Although it did not comprehensively answer lasting questions

64. Lyall, *supra* note 62.

65. Rooks, *supra* note 53, at 248.

66. *Id.* at 247–48.

67. *Bloody Sunday in Derry*, N.Y. TIMES, (Feb. 1, 1972), <https://www.ny-times.com/1972/02/01/archives/bloody-sunday-in-derry.html>.

68. Lynn Wartchow, *Civil and Human Rights Violations in Northern Ireland: Effects and Shortcomings of the Good Friday Agreement in Guaranteeing Protections*, 3 N.W. J. INT’L HUM. RTS. 1, 4 (2005).

69. See *infra* Section III Part B.

70. See *infra* Section III Part B; see also *infra* Section IV.

71. See *infra* section IV Part B.

72. Republicans is a broad term for the movements that want a united Ireland, whereas the Unionists in Northern Ireland are loyal to the United Kingdom.

73. Rooks, *supra* note 53, at 248.

regarding the political status of the island, it did mark an attempt at peacemaking and understanding.⁷⁴

Following increased cooperation between the two countries, Ireland and the United Kingdom announced the Downing Street Declaration (Declaration) in 1993, also known as the Joint Declaration for Peace.⁷⁵ In this Declaration, the governments agreed to two things: (1) to hold the Irish government responsible for supporting changes in the Irish constitution that would abandon the claim to Northern Ireland and (2) allow for eventual reunification.⁷⁶ These provisions, however, do not avoid the fact that the Protestant majority could still veto any resolution for Northern Ireland to self-declare the intent to unify.⁷⁷

The Declaration specifically recognizes:

“the need to engage in dialogue which would address with honesty and integrity the fears of all traditions. But that dialogue, both within the North and between the people and their representatives in both parts of Ireland, must be entered into with an acknowledgement that the future and security and welfare of the people of the island will depend on an open, frank, and balanced approach to all the problems which for too long have caused division.”⁷⁸

Furthermore, the governments “believe that these arrangements offer an opportunity to lay the foundations for a more peaceful and harmonious future, devoid of the violence and bitter divisions which have scarred the past generation.”⁷⁹

The Good Friday Agreement (Agreement) is one of the most widely known agreements to come out of the Troubles, including involvement by the United States.⁸⁰ Technically two agreements, one

74. Woodwell explains the changing sentiment: he suggests that Ireland and the United Kingdom saw Northern Ireland as a shared problem rather than a point of contention. Woodwell, *supra* note 48, at 176.

75. *Id.* at 177.

76. *Id.* at 177–78.

77. Rooks, *supra* note 53, at 249.

78. *Joint Declaration Downing Street Declaration*, U.N. PEACEMAKER, https://peacemaker.un.org/sites/peacemaker.un.org/files/IE-GB_931215_Downing%20Street%20Declaration.pdf.

79. *Id.* para. 12.

80. In his State of the Union speech in 1999, Bill Clinton said that “All Americans can be proud that our leadership helped to bring peace in Northern Ireland.” BILL CLINTON, U.S. President, State of the Union Address (Jan. 19, 1999), *in* U.S. GOV'T PUBL'G OFF. 35 WKLY. COMPILATION OF PRESIDENTIAL DOCUMENTS No. 3, at 84 (1999),

between the major political parties in Northern Ireland and the other between the UK and Ireland,⁸¹ the Agreement was considered the “end” to the Troubles.⁸² The Agreement arranged the government structure of Northern Ireland along with other important provisions.⁸³ Such provisions included conditions for the release of individuals imprisoned for Troubles-related charges, reduction of British Armed Forces located in Northern Ireland, and measures designed to protect human rights.⁸⁴ The Agreement effectively established a power-sharing agreement for Northern Ireland that attempted to cooperation in the historically competitive and contentious sociopolitical environment.⁸⁵ The Agreement was resoundingly approved with impressive turnout by both Northern Ireland and Ireland with 71% approval and 94% approval, respectively.⁸⁶ The Agreement was celebrated around the

<https://www.govinfo.gov/content/pkg/WCPD-1999-01-25/html/WCPD-1999-01-25-Pg78-2.htm>. Nobel Laureate and Northern Irish peace architect John Hume also recognizes the United States in his Nobel Peace Prize speech. John Hume, Nobel Lecture (Dec. 10, 1998) (transcript available at the Nobel Prize Website), <https://www.nobelprize.org/prizes/peace/1998/hume/lecture/>.

81. Amélie Godefroidt, Karin Dyrstad & Kristin Bakke, *The Past, Brexit, and the Future in Northern Ireland: A Quasi-Experiment*, 33 J. ELECTIONS, PUB. OP. & PARTIES, 149, 150 n.2 (2023), <https://www.tandfonline.com/doi/epdf/10.1080/17457289.2022.2090951?needAccess=true>.

82. Luke McGee, *What Is the Good Friday Agreement? How a Historical Deal Ended the Troubles in Northern Ireland*, CNN (Apr. 10, 2023, 6:05 AM), <https://www.cnn.com/2023/04/07/uk/good-friday-agreement-explained-intl-cmd-grb/index.html>. But see Kara Fox, *What's Behind the Recent Violence in Northern Ireland?*, CNN (Apr. 10, 2021, 6:34 AM), <https://www.cnn.com/2021/04/09/uk/northern-ireland-violence-explainer-grb-intl/index.html>. Academics treat sectarian-related violence as isolated incidents or remnants representative of the lasting sentiments of the Troubles instead of indicating a return to the violence that defined the latter half of the 20th Century in Northern Ireland. See Mary C. Murphy, *Northern Ireland and Brexit: Where Sovereignty and Stability Collide?*, 29 J. CONTEMP. EUR. STUD. 405, 406 (2021) (quoting John Darby, *Conflicts in Northern Ireland: A Background Essay*, in *Facets of the Conflict in Northern Ireland* 15 (Seamus Dunn, ed., 1995)), <https://www.tandfonline.com/doi/pdf/10.1080/14782804.2021.1891027> (“The violent campaign of paramilitary violence which began in the late 1960s and had its roots in the ‘social, economic, cultural and geographical structure of Northern Ireland’ had given way to a delicate political equilibrium underpinned by the provisions of the 1998 Belfast/Good Friday Agreement.”).

83. Woodwell, *supra* note 48, at 179.

84. Agreement Between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland, Ir.-U.K., Apr. 10, 1998, ITS No. 18/2000 (Ir.), <https://www.dfa.ie/media/dfa/alldfawebsitemedia/treatyseries/uploads/documents/treaties/docs/200018.pdf> [hereinafter *The Good Friday Agreement*].

85. Wartchow, *supra* note 68, ¶ 19.

86. Woodwell, *supra* note 48, at 180.

world,⁸⁷ memorialized in pop culture,⁸⁸ and used as a model for successful conflict resolution.⁸⁹

The Agreement also specifically notes, regarding policing, that “Northern Ireland’s history of deep divisions” has made the issue “highly emotive.”⁹⁰ Although the Agreement did ‘end’ the Troubles it was not the final agreement while all interested parties were a part of the European Union.

As a post-Good Friday Agreement, the St Andrews Agreement served as a building block for the devolution of powers rather than a reactionary document to a political issue.⁹¹ Policing was one such aspect of this agreement for which discussions were reported to “have progressed well in the Preparation for Government Committee. The Governments have requested the parties to continue discussions so as to agree the necessary administrative arrangements to create a new policing and justice department.”⁹² The St Andrews Agreement hoped that this devolution would occur by May 2008.⁹³ Not only did the St Andrews agreement provide for the devolution of the police force, but it also states that the parties “hope they will seize this opportunity for bringing the political process in Northern Ireland to completion an establishing a power-sharing government for the benefit of the whole community.”⁹⁴

Four years after the St Andrews Agreement, the Hillsborough Agreement served as a follow up and outlined the continued efforts to

87. See *supra* note 82.

88. See, e.g., *Derry Girls* (Hat Trick Productions 2018), <https://www.netflix.com/title/80238565>. *Derry Girls* is a series on Netflix that focuses on a group of friends navigating the Troubles. *Id.* The series ends with the main characters reacting to how their lives changed because of the Good Friday Agreement. *Derry Girls: The Agreement* (Hat Trick Productions broadcast on Netflix May 18, 2022). The Troubles appear generally in popular culture as well. See, e.g., U2, *Sunday Bloody Sunday, on WAR* (Island Records 1983) (“I can’t believe the news today/Oh I can’t close my eyes and make it go away/How long, how long must we sing this song?”); see also THE CRANBERRIES, *Zombie, on NO NEED TO ARGUE* (Island Records 1994) (“It’s the same old theme/Since nineteen-sixteen/In your head, in your head, they’re still fighting/With their tanks and their bombs/And their bombs and their guns/In your head, in your head, they are dying”).

89. See, e.g., James B. Steinberg, *The Good Friday Agreement: Ending War and Ending Conflict in Northern Ireland*, 2 TEX. NAT’L SEC. REV. 78 (2019).

90. The Good Friday Agreement, *supra* note 84, para. 1 (Policing and Justice).

91. Agreement at St Andrews, Ir.-U.K., paras. 7, 13, Oct. 13, 2006, DEPARTMENT OF FOREIGN AFFAIRS, <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/northernireland/st-andrews-agreement.pdf>.

92. *Id.* para. 7.

93. *Id.*

94. *Id.* paras. 7, 13 (emphasis added).

continue the devolution of policing.⁹⁵ The Hillsborough Agreement also devoted substantial attention to parades—a cultural phenomenon of Northern Ireland.⁹⁶

The history of Irish independence, partition, and subsequent peacemaking agreements all include intensely important issues to both the communities of Ireland and Northern Ireland at a local level.⁹⁷ Following the relative peace underpinned by cross community agreements, a generally peaceful co-existence and a devolution of powers, Brexit posed a threat to not only the European Union but the peace process as well.⁹⁸

C. *Brexit and the Protocol on Ireland/Northern Ireland*

The UK's withdrawal from the European Union posed a serious test to the network of agreements that marked the end to the Troubles and the peace process, while adding a new threat to the UK and Northern Ireland accessing the European Union market.⁹⁹ Many worried that Brexit's impact on trade, agriculture, and other elements central to the stability between Northern Ireland and Ireland would bring the countries back to the times of the Troubles.¹⁰⁰ Brexit led to the penultimate agreement necessary to the understanding of the Windsor Framework: the Protocol on Ireland/Northern Ireland (Protocol).¹⁰¹ The Protocol emphasizes two key points that provide insight to the parties' intent: the desire to avoid a hard border between Northern Ireland and Ireland,¹⁰² and the "unique circumstances on the Island of Ireland[.]"¹⁰³

95. Agreement at Hillsborough Castle, Ir.-U.K., § 1, Feb. 5, 2010, GOV.UK, https://assets.publishing.service.gov.uk/media/5a7b71a0e5274a34770ebbc0/agreement_at_hillsborough_castle_5_february_2010.pdf.

96. See, e.g., Neil Jarman, *Regulating Rights and Managing Public Order: Parade Disputes and the Peace Process, 1995-1998*, 22 *FORDHAM INT'L L. J.* 1415, 1417 (1999), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1624&context=ilj> ("Parades have been a recurrent, if irregular, source of disorder and violence in Ireland over the past two hundred years. Such public displays of collective identity and strength have often become particularly problematic at times of public debate on larger political concerns over the constitutional status of Ireland or the position of the Catholic community within the wider body politic.").

97. See *supra* text accompanying notes 72–96.

98. See *infra* Section III.C.

99. Murphy, *supra* note 82, at 407.

100. Murphy, *supra* note 82, at 407.

101. Protocol on Ireland/Northern Ireland, *supra* note 6.

102. See Protocol on Ireland/Northern Ireland, *supra* note 6.

103. *Id.*

One important part of the Protocol is the democratic consent mechanism (which serves for the partial inspiration and model of the Stormont Brake).¹⁰⁴ The mechanism allows the Northern Ireland Parliament to vote their consent to have the subjects of Articles 5-10 of the Protocol apply.¹⁰⁵ The scope of the subjects enumerated in the mechanism include customs and movement of goods; protection of the UK internal market; technical regulations, assessments, registrations, certificates, approvals and authorizations; value added tax and excise; the single electricity market; and State aid.¹⁰⁶ Furthermore, the Protocol specifies that “amendments and replacements to [EU Customs Code and specified EU acts providing for the free movement of goods] automatically apply in Northern Ireland[.]”¹⁰⁷ The mechanism and the entire Protocol is understood within Article 1(3) of the Protocol, with the goal being: “to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 [Belfast/Good Friday] Agreement in all its dimensions.”

The Protocol was not received well by the people of Northern Ireland at first.¹⁰⁸ The Windsor Framework (Framework) attempted to provide a fix.¹⁰⁹

104. See Protocol on Ireland/Northern Ireland art. 18, *supra* note 101, at 32–34; see also David Phinnemore & Lisa Claire Whitten, *Democratic Consent and the Protocol on Ireland/Northern Ireland*, in POST-BREXIT GOVERNANCE NI 2022 (Queen’s Univ. Belfast, Project Publ’ns: Explainers No. 6, 2022) (Introduction), https://drive.google.com/file/d/1xLt79OtdovCn4_7dlz89vceFBtF1H_9G/view.

105. *Id.*

106. See Protocol on Ireland/Northern Ireland *supra* note 6 art. 5-10.

107. Phinnemore & Whitten, *supra* note 104, at 2.

108. Andrew Madden, *Poll: 59% in Northern Ireland fear summer of violence over Brexit Irish Sea Border*, BELFAST TELEGRAPH, (May 24, 2021), <https://www.belfasttelegraph.co.uk/news/brexit/poll-59-in-northern-ireland-fear-summer-of-violence-over-brexit-irish-sea-border/40460630.html> (“Almost two-thirds of people in Northern Ireland are concerned about a return to violence this summer due to tensions around the NI Protocol, the poll suggests.”); see also David Phinnemore & Katy Hayward, *What does the Northern Irish Public Think about the Protocol?*, UK IN A CHANGING EUROPE, (May 5, 2022) <https://ukan-deu.ac.uk/attitudes-to-the-northern-ireland-protocol/> (“Initially voters were evenly split on whether the Protocol and its dedicated arrangements for Northern Ireland are ‘a good thing’ (43% agreeing versus 44% disagreeing). By the third poll in October, opinion had shifted; with a narrow majority (52%) agreeing the Protocol was ‘a good thing’ with 41% disagreeing.”).

109. See discussion *infra* Section III Part D.

D. *The Windsor Framework and the Stormont Brake*

Included in the Framework, the Stormont Brake (Brake) attempted to further address the democratic deficit.¹¹⁰ The Brake reflects the signatories' intent to "achieve as broad a consensus across all communities as possible."¹¹¹ For "significant new [EU] goods rules impacting . . . everyday life in Northern Ireland," the Brake provides a mechanism for MLAs in the Northern Ireland Government to block the application of the aforementioned EU goods rules.¹¹² These goods rules are limited to goods, agriculture, and some customs laws.¹¹³

Application of the Brake begins when thirty MLAs in Northern Ireland from two or more parties sign a petition stating their concern for a new EU rule.¹¹⁴ The UK Government must then consult with the local parties to ensure that a "proper scrutiny process" is established to consider the "potential impacts and their response," while simultaneously advising the parties on how to "codify domestically this defined process of scrutiny," and ensuring that the Brake is the last possible course of action.¹¹⁵ The Framework emphasizes that the Brake will not be available for "*trivial* reasons: there must be something '*significantly*' different about a new rule, whether in its *content* or *scope*, and MLAs will need to show that the rule has a '*significant impact specific to everyday life*' that is liable to persist."¹¹⁶

After thirty MLAs across two parties decide to pull the Brake, the proposed EU goods rule or regulation is "suspended automatically from coming into effect."¹¹⁷ The only way to implement the rule following the MLAs' petition is for the UK and the EU to agree that the

110. HM GOV'T., THE WINDSOR FRAMEWORK: A NEW WAY FORWARD, 2023, Cm. 806 [hereinafter "Windsor Framework" or "Framework"].

111. *Id.* at 23.

112. *Id.*

113. David Torrence, *Northern Ireland: The Stormont Brake*, 11 (2023), available at <https://researchbriefings.files.parliament.uk/documents/CBP-9757/CBP-9757.pdf>.

114. See Windsor Framework *supra* note 110, at 23. (There is no clear rule for what short cite for *supra* is proper for a command paper. This is a recommendation based on other forms and the use of hereinafter) Note that the application of this brake is not concerning the application of the treaty provisions, but rather external EU laws. This is a prime example of treating Northern Ireland as a separate entity from the UK and addressing the democratic deficit. The people of Northern Ireland may, through their representatives, decide that they would like the new EU laws to apply. This may be, in some part, related to Northern Ireland's position on the Brexit referendum. *EU Referendum: Northern Ireland Votes to Remain*, BBC (June 24, 2016), <https://www.bbc.com/news/uk-northern-ireland-36614443> ("Northern Ireland has voted to remain in the EU Referendum by a majority of 56% to 44%.").

115. See Windsor Framework *supra* note 110, at 23.

116. *Id.* (emphasis added).

117. *Id.*

provisions should apply—which in practice, gives the UK government an “unequivocal veto.”¹¹⁸ Importantly, this “safeguard . . . is not subject to the European Union Court of Justice (“ECJ”) oversight, and any dispute on this issue would be resolved through subsequent independent arbitration according to international, not EU law.”¹¹⁹

If Northern Ireland follows all the established procedures, and the UK does not agree with the EU and does not veto the application, then the EU is allowed to take “appropriate remedial actions” to address Northern Ireland’s access to both the UK market and the EU market without being subject to the blocked EU regulation.

While the procedural aspects of the Brake are clearly spelled out and have precedent with the petition for concern located in other agreements,¹²⁰ the substantive aspects of the Brake are far less clear.¹²¹ Northern Ireland also needs a sitting government to pull the Brake; as of December 28, 2023, that is something that Northern Ireland does not have.¹²²

IV. ANALYSIS

As an untested treaty provision with a vague substantive requirement, there is much uncertainty about the potential application of the Brake. An analysis of the Brake through *effet utile*, the Brussels Effect, and a teleological treaty interpretation will provide insight to

118. *Id.* Framing the Brake differently, it allows Northern Ireland to act as a semi-sovereign country. The only way for new EU laws to apply in Northern Ireland would be if either Northern Ireland wanted the law to apply (or didn’t follow the correct procedures), or if the UK agreed with the EU and wanted Northern Ireland to be subject to a new EU rule.

119. *Id.*

120. The procedural aspects are not exactly in line with the present Brake’s procedural mechanisms. The existing mechanism’s goal is to “prevent a simple majority of the Assembly from passing decisions without a critical amount of support from both national blocs.” Alex Schwartz, *How Unfair is Cross-Community Consent? Voting Power in the Northern Ireland Assembly*, 61 N. IR. LEGAL Q. 349, 350 (2010). The existing literature largely ignores any discussion of the petition of concern mechanism from the Protocol as having any precedential value whatsoever, treating the Brake as a new provision.

121. *See supra* Section III Part D.

122. The Democratic Unionist Party, a nationalist party that supported Brexit, has been boycotting Stormont since early 2022 because of issues with post-Brexit trade rules. Gareth Gordon, *NI Talks: DUP Rules Out Pre-Christmas Stormont Deal*, BBC (Dec. 18, 2023), https://www.bbc.com/news/uk-northern-ireland-67747439?xtor=AL-72-%5Bpartner%5D-%5Bbbc.news.twitter%5D-%5Bheadline%5D-%5Bnews%5D-%5Bbizdev%5D-%5Bisapi%5D&at_link_type=web_link&at_campaign_type=owned&at_campaign=Social_Flow&at_link_id=152DBC6A-9D81-11EE-8231-32D4E03B214A&at_bbc_team=editorial&at_link_origin=BBCNews&at_format=link&at_ptr_name=twitter&at_medium=social.

the practical implementation of the Brake through application of those theories and principles to proposed and hypothetical EU regulations.¹²³

The Brake may apply to two different proposed regulations: a Carbon Border Adjustment Mechanism (CBAM)¹²⁴ and legislation that will “force companies to ensure [supermarket’s] direct and indirect suppliers have ‘deforestation-free supply chains’.[sic]”¹²⁵ In fact, the Northern Ireland Assembly recently published a newsletter outlining the steps already underway to decide whether the Brake could apply, specifically addressing the deforestation regulations.¹²⁶ The potential application of the Brake to the CBAM is less than clear – academics say that the CBAM would be a new rule and thus potentially trigger the application of the Brake, whereas a UK government official said that a cross-community vote would be needed, but the Stormont Brake would not be procedurally viable.¹²⁷

A. *Effet Utile and the Brussels Effect*

While the treaty interpretation principle of *effet utile* sets the bare minimum for the application of the Brake, that all provisions *must* have some practical effect,¹²⁸ it is limited by the Brussels Effect, which makes it very hard for countries to escape the EU regulation machine.¹²⁹ Accordingly, there must be some new EU rule or regulation that has a ‘substantial impact’ on communities in Northern Ireland that is liable to persist, but this rule or regulation cannot be so widely adopted by either the European Union or the rest of the world that other communities will be dealing with the same substantial impact.¹³⁰

The European Research Group, without mentioning the Brussels Effect, postulates that “if you are embedded in a corpus of EU laws . . . you are then very vulnerable to adverse action which might be

123. See *infra* Section IV.

124. John Campbell, *Brexit: EU Carbon Law ‘Could be Stormont Brake’s First Test’*, BBC (Sept. 4, 2023), <https://www.bbc.com/news/uk-northern-ireland-66702420>.

125. Madeleine Speed, *UK Retailers Urge Ministers to Align with EU on New ‘Deforestation-Free’ Rules*, FINANCIAL TIMES (Oct. 5, 2023), <https://www.ft.com/content/dc6a3d54-5235-44b6-9f14-fc321a5d0754>.

126. In the Newsletter, the Northern Ireland Assembly speaks of the impacts of pending EU legislation as “emerging risks.” *Brexit & Beyond Newsletter*, N. IR. ASSEMBLY (Oct. 9, 2023), <http://www.niassembly.gov.uk/assembly-business/brexit-beyond-newsletters/issue-127—9-october-2023/>.

127. See Campbell *supra* note 124.

128. See *supra* Section II Part D.

129. One may ask whether it is possible to have a significant effect that is liable to persist. See *supra* Section II Part D.

130. See discussion *supra* Section II Part D.

taken by the EU if you choose to exercise your theoretical legal right to refuse to adopt changes in this body of laws to which you are subject.”¹³¹

While *effet utile* and the Brussels Effect provides for an abstract scope of the Brake’s potential application, the teleological treaty interpretation provides insight to how the complex history and culture of Northern Ireland provides a substantive and concrete picture of the kinds of EU rules and regulations that could be subject to the Brake’s application.¹³²

Teleological Treaty Interpretation

A comprehensive understanding of the Brake is incomplete without an analysis that understands the context and surroundings of the various agreements that predate it.¹³³ Unlike an international investment agreement where the intended beneficiaries are investors seeking to take advantage of favorable and clear laws and regulations,¹³⁴ the Framework necessarily adopts the understanding that differences are resolved through the political process rather than through independent third-party groups.¹³⁵

A teleological treaty interpretation provides much needed meaning to the Brake, whereas asking what the text of the Brake really means would ignore the complex history of Northern Ireland and the agreements that provide insight into the object and purpose of the treaties.¹³⁶ Adopting a purely textual approach to identifying what a significant impact would be provides nearly no insight as to what the terms really mean other than in the abstract, whereas in the case of an international investment agreement, a textual approach provides clarity to

131. Torrence, *supra* note 113, at 36.

132. *See infra* Section IV Part B.

133. *See infra* Section IV Parts D, E.

134. *See supra* Section II Part D.

135. *See, e.g.*, Joint Declaration Downing Street Declaration, *supra* note 78 (“The British and Irish Governments will seek, along with the Northern Ireland constitutional parties through a process of political dialogue, to create institutions and structures which, while respecting the diversity of the people of Ireland, would enable them to work together in all areas of common interest.”); *see also* The Windsor Framework: A New Way Forward, *supra* note 8 (“The UK Government has long recognized the need to take account of Northern Ireland’s unique circumstances, and to protect all dimensions of the Belfast (Good Friday) Agreement. This means avoiding a hard border on the island of Ireland and supporting North-South cooperation – including respecting the longstanding single epidemiological area on the island of Ireland and arrangements that existed long before Brexit.”).

136. *Id.*

interested third parties.¹³⁷ Furthermore, interpreting the Brake within a subjective framework and using preparatory documents leaves out the intense and complex history of Northern Ireland.¹³⁸ It is impossible to understand the Brake without considering its application within the history and context in which it was produced.¹³⁹

Statements by parties potentially affected by new EU rules demonstrate an understanding that the Brake is necessarily connected to prior agreements.¹⁴⁰ Northern Ireland's Secretary of State, Chris Heaton-Harris, remarked that the "Stormont Brake is at the heart of the Westminster framework. It addresses the democratic deficit, *restores the balance of the Belfast/Good Friday agreement*, and ends the prospect of dynamic alignment."¹⁴¹

Considering the teleological treaty interpretation (and its accompanying historical context), *effet utile*, and the Brussels Effect, the Brake appears as a mechanism to continue major elements of various agreements such as cross community cooperation for issues that have been historically important to the people of Northern Ireland.¹⁴²

B. Potential Applications of the Stormont Brake to New EU Rules

There are two potential rules that have received treatment that indicate they may be subjects of the Stormont Brake. First, the EU has published new rules for ensuring that supermarkets remove products from their supply chains that are a result of deforestation.¹⁴³ Second, the Carbon Border Adjustment Mechanism (CBAM) purports to impose a tariff on products that are carbon intensive.¹⁴⁴

Both the deforestation rule and the CBAM face substantial procedural challenges. Although the deforestation rule has been published since June 9, 2023, the rule is expected to apply on December 30, 2024.¹⁴⁵ The CBAM faces an even more intense procedural challenge:

137. *See supra* note 26; *see also Significant*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("1. Embodying or bearing some meaning; having or expressing a sense. 2. Standing as a subtle sign of something; expressive or obscure meaning. 3. Of special importance; momentous, as distinguished from insignificant.").

138. *See supra* Section II.

139. *Id.*

140. Torrence, *supra* note 131, at 36.

141. *Id.* (emphasis added).

142. *See supra* note 24.

143. *See supra* note 126.

144. *Id.*; *see also supra* note 124.

145. *Timeline*, EUROPEAN COMMISSION, https://green-business.ec.europa.eu/implementation-cu-deforestation-regulation/timelines_en, (last visited Dec. 27, 2023).

the CBAM has already been imposed and, as of October 1, is in effect in a transitional phase.¹⁴⁶

The deforestation rule and CBAM also face similar substantive challenges. If the Northern Ireland Assembly has a sitting executive before the implementation of the deforestation rule and the CBAM,¹⁴⁷ they may mount a challenge to the regulation by saying that the regulation will have a “significant impact that is liable to persist.”¹⁴⁸ These regulations, however, do not immediately appear to have a “significant impact that is liable to persist” for multiple reasons.¹⁴⁹ They run afoul of the Brussels Effect and regulations do not appear in the agreements predating the Windsor Framework.¹⁵⁰ The impacts of such a rule that does not target specific traditions of Northern Ireland is likely to be complied with around the world. In other words, there is nothing about Northern Ireland that would render it unique and not subject to the limitations of the Brussels Effect.

C. *Potential Applications for Hypothetical Rules*

As displayed above, these proposed EU regulations are unlikely to be candidates for the Stormont Brake. The only EU rules that may face opposition via the Stormont Brake include restrictions on pets, food transport, public gatherings, and policing.¹⁵¹ These rules would significantly impact the lives of the people of Northern Ireland and the impacts would be liable to persist, as each of those subjects were addressed in both agreements predating the Framework and the Framework itself.

For example, the drafters of the Framework were careful to include pets as an issue specific to the people of Northern Ireland, as opposed to the rest of the United Kingdom, that was central to their “lives and livelihoods.”¹⁵² The drafters didn’t limit themselves with pets, either—pets were only part of the list that marks a difference in treatment between Northern Ireland and the rest of United Kingdom.¹⁵³ The rest of the list starts broad, with taxes and health services, but

146. *See supra* note 8.

147. *See supra* note 126.

148. *See id.*; *see also supra* note 8.

149. *See supra* note 126.

150. *See supra* Section III.D; *see also supra* Section IV.A.

151. *See supra* note 8. The Framework is particularly careful to address items of importance including those enumerated.

152. *Id.*

153. *Id.*

narrows to “the ability to get plants and seeds at a local garden centre.”¹⁵⁴ This list is of exceptional importance to the historical and teleological treaty interpretation because it provides insight into the purpose for the treaty.¹⁵⁵ The framers provide even more insight when they talk about the disapproval with the Protocol: “the application of the old Protocol felt as if it was pushing Northern Ireland and Great Britain apart, contrary to its integral place in our Union. At the same time, it had no mechanisms to manage any further changes in UK and EU rules.”¹⁵⁶

V. CONCLUSION

Although an integral part of the Windsor Framework, the Stormont Brake has significant limitations to its practical applications.¹⁵⁷ Understanding the Brake both within the constraints of *effet utile* and its last-resort characterization leaves the Brake with a razor-thin application.¹⁵⁸ Furthermore, the Brussels Effect presents significant problems for the application of the Stormont Brake: widespread de facto acceptance of EU regulations around the world affects the significant impacts on the people of Northern Ireland, and the people of Northern Ireland may benefit from accepting EU regulations and having the benefits of access to both the UK market and the EU market.¹⁵⁹ Ultimately, navigating both the intrinsic Windsor Protocol and extrinsic Brussels Effect limitations leaves the Stormont Brake with an extremely narrow application: one that will only be used in instances considered uniquely historically, culturally, and contextually important to the people of Northern Ireland.¹⁶⁰ The Stormont Brake will be a last chance measure to ensure that there won't be a return to a hard border and a return to the Troubles rather than a commonly used mechanism to absolve Northern Ireland of being subject to wide-reaching European Union regulations.¹⁶¹

154. *Id.*

155. *See supra* Section II Part C.

156. *See supra* note 8.

157. *See supra* Section IV.

158. *Id.*

159. *See supra* Section IV Part A.

160. *See supra* Section IV.

161. *See supra* note 114. With the majority of Northern Ireland voting to remain, it is logical to assume that most people in Northern Ireland would be supportive of having as free of trade with the European Union as possible.