

The 1,800 words that shaped the Free State and left a tangled legacy

Thomas Mohr

Shorter than many school essays, the brevity of the Anglo-Irish Treaty allowed for the creative use of ambiguity over key points of international law as the fledgling state found its place in the world

One of the most striking things about the Anglo-Irish Treaty is how short it is for a document with such wide-ranging consequences. There are just over 1,800 words in the main text. This makes it shorter than many school essays and a tiny fraction of the length of EU treaties or the Brexit withdrawal agreement.

Yet its impact was immense. It began a year of transition that would conclude when 26 Irish counties officially left the United Kingdom on December 6, 1922, and formed the Irish Free State.

Contrary to popular belief, the treaty did not partition Ireland. The six counties of Northern Ireland had already separated from the rest of the island under the Government of Ireland Act 1920. The treaty had to deal with partition as an entrenched reality.

Its brevity ensured that many important points remained vague. It provided that the Irish Free State would have the same status as the “dominions” of the British Empire. The dominions were the colonies of white settlement that included Canada, Australia, South Africa and New Zealand. Yet there was never a legal definition of dominion status. Legal experts in the early 1920s disagreed on whether they were merely self-governing colonies that enjoyed a great deal of autonomy or had evolved to become fully sovereign



states. Irish lawyers tended to argue that the Irish Free State came into existence as a fully sovereign state while British lawyers tended to argue that it had not.

The treaty was also ambiguous about the circumstances of the birth of the Free State. British courts in the 1920s and 1930s maintained that it had been created by Westminster, which many people still called the “imperial parliament” in the early 1920s. Irish courts insisted that the new state had been created by Irish authorities and refused to regard it as a gift from London.

COMPROMISE WORDING

It is even disputed whether the document popularly known in Ireland as “the treaty” was an international treaty at all. Its original title was simply “Articles of Agreement” and the word “treaty” did not appear in the document that was signed on December 6, 1921. One day after signing, the Irish delegates contacted London and requested that the name be changed to “Articles of Agreement for a Treaty between Great Britain and Ireland”. David Lloyd George agreed even though he was under no obligation to do so.

The British prime minister probably made this concession because the inclusion of the word “treaty” would help Arthur Griffith and Michael Collins to sell the agreement to nationalists. Nevertheless, British lawyers later argued that the agreement was not an international treaty. They insisted that a



Guard: King George V in Belfast for the opening of the Northern parliament in June 1921



Popular: Michael Collins addressing a vast crowd in Cork

treaty could only be made by two sovereign states. In 1921, the British government did not recognise any sovereign state in Ireland. There could be no question of recognising any Irish Republic declared during or after the 1916 Rising. British lawyers and politicians argued that the UK could not sign a treaty with, say, Yorkshire, and therefore could not do so with Ireland.

By contrast, the Irish provisional government that emerged in early 1922 insisted that the agreement was indeed an international treaty, the first between Great Britain and Ireland as equal parties.

The treaty’s ambiguous nature was most apparent in the wording of the parliamentary oath. This provision, popularly known as the “oath of allegiance”, would be a point of dispute and controversy in Irish politics for much of the 1920s and 1930s.

British insistence on the inclusion of a parliamentary oath that mentioned the king was not based on sentimental love of monarchy but on pragmatic legal and political foundations. Common allegiance to the king was the basic legal principle that provided unity to the sprawling territories of the British Empire. The king had to appear in the parliamentary oath to show the world that although the territory of the future Irish Free State was going to secede from the UK it was not going to secede from the British Empire. This message to restless elements throughout

the empire needed to be emphasised as much as possible. Unfortunately, this symbol of legal and political unity proved deeply offensive to Irish nationalist sentiment.

After much negotiation, the British and Irish delegations agreed on a compromise wording for the oath in which Irish parliamentarians would swear “true faith and allegiance to the Constitution of the Irish Free State” but would also swear to be “faithful” to the king.

It deliberately muddled the waters. It allowed Irish nationalists to argue that they were really swearing an oath of allegiance to their own constitution while merely promising to be faithful to the king.

Edward Carson voiced unionist opposition to the treaty when he condemned this wording as “one of those curious compromises which men think they can make by paper and ink, so that you can be half loyal and half disloyal, and then each of you has had a triumph”.

The treaty’s vague nature was also evident in the provisions relating to Northern Ireland. The Belfast parliament was allowed to choose between the United Kingdom and the Irish Free State. Nobody had any doubt which choice would be made.

BOUNDARY COMMISSION

The treaty provided that a decision in favour of the UK would have consequences. These took the form of a Boundary Commission that was charged with redrawing the Border “in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions”.

It was never clear how these conflicting interests should be balanced. The treaty was silent on whether the existing Border should be used as a baseline that would remain intact unless sufficient reason was found to alter it. The document also provided little guidance on whether the Boundary Commission could transfer territory from the Irish Free State to Northern Ireland in addition to vice versa.

The Boundary Commission that was eventually convened in 1924 did treat the existing border as a baseline, which limited the possibility of radical change. It also

recommended small transfers of territory from the Irish Free State to Northern Ireland in addition to more substantial transfers in the opposite direction. These interpretations proved unacceptable to the Irish government when details were leaked to the press

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‘The centuries-old quarrel between Britain and Ireland has been closed’

Irish Independent

From the *Irish Independent*, December 7, 1921

In the early hours of Tuesday morning a treaty between Great Britain and Ireland was signed at Downing Street by the members of both delegations. With the signing of this document a memorable chapter in Irish history and in Anglo-Irish relations has been opened.

The feud and friction of centuries come to an end, and after the terms have been ratified by the parliaments of both countries, as we have no doubt they will be, the Irish Free State will be mistress in her own house, and in a position to work out her own salvation in peace and without hindrance. Old

estrangements and bitterness between the two nations will be forgotten. Side by side they will develop and prosper in harmony and amity.

After the years of agony we have endured, after the many fluctuations at the conference itself, with its moments of tension and anxiety, Ireland will today joyfully receive the news that the long and arduous deliberations have culminated in a treaty which assures her the best possible terms that in existing conditions could be secured.

We said at the initiation of the Anglo-Irish conference that the plenipotentiaries selected to advocate and uphold Ireland’s cause could be relied upon

to discharge their task with steadfastness, dignity and ability. In face of many difficulties, they represented the nation ably and efficiently, and strenuously maintained the rights of Ireland.

We congratulate them upon their skilful and diplomatic conduct of the negotiations, and the signal success they have achieved. They are entitled to, and will be accorded, the gratitude of the nation. It goes without saying that the country will support them and the treaty to which, as our plenipotentiaries, they have put their signatures.

Already there are indications that the British people wholeheartedly support the treaty. It is expected that the King will issue a proclamation summoning parliament for next Wednesday for the purpose of ratifying the Treaty of Peace. We take it that Dáil Eireann will also give ratification without delay.

There remains the Belfast parliament. What will Sir James Craig and his colleagues do? The Treaty embraces all Ireland, but the Belfast parliament is given the option of contracting out before the expiration of a month from the passing of the Act for the ratification of the Treaty. If, however, it declines to remain within the Irish Free State, a commission will be appointed to determine “in accordance with the wishes of the inhabitants so far as may be compatible with economic and geographic conditions” the boundaries between Northern Ireland and the rest of Ireland.

The centuries-old quarrel between Britain and Ireland has been closed. Differences between the north-east corner and the rest of Ireland are of modern growth. Under the Treaty, the Irish Free State will have complete and absolute control of finance, trade

and commerce. For the first time in the history of the country, we shall have a parliament endowed with powers of fostering and developing industries of every kind, and at the same time easing the burden of taxation. It is more to the interest of the people of the North-East to remain in than to contract out. Mr de Valera and, indeed, the entire majority stretch out the hand to them. Will they grasp it?

We appeal to them to reunite with their fellow countrymen within the Irish Free State. They should listen to the sound advice given them by Lord Birkenhead and Mr Chamberlain, two Conservative statesmen, who have played a conspicuous and honourable part in the negotiations so happily concluded. Ireland of her free will enters into association with the British Commonwealth of Nations. The Belfast parliament is invited to form part of the Irish Free State of her free will.

in 1925. The Boundary Commission collapsed and the Border would remain unchanged.

The brevity and vagueness of the treaty allowed two sides holding radically different objectives and legal positions to agree on a common document containing the basis of a future constitutional settlement. The provisions were sufficiently flexible to allow people on both sides of the Irish Sea to see what they wanted in them.

Irish and British opponents of the treaty, however, were united in dismay as the ambiguous elements allowed space for all their worst fears to intrude. They called for clearer provisions and demanded changes to ensure that their point of view would predominate.

Greater clarity would, of course, have been incompatible with mutual agreement. Only a short and ambiguous document could create a viable settlement in 1921, which is why the treaty took the form that it did.

● *Dr Thomas Mohr is associate professor at the Sutherland School of Law, University College Dublin. His latest book is Guardian of the Treaty: The Privy Council Appeal and Irish Sovereignty (Four Courts Press, 2016).*