

## **No-one in control? Brexit and the challenge to the Westminster Model<sup>1</sup>**

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### **ABSTRACT**

*This paper provides an assessment of the impact of the Brexit process – from the June 2016 referendum to the end of March 2019 (when the Brexit day was originally scheduled) – on the British political system. Drawing on the classic work of Lijphart and the ensuing scholarship applying the Westminster model to Britain, it seeks to understand whether and to what extent Brexit has impacted on the majoritarian features of the system. Adapting Lijphart's criteria, it places its focus on the electoral-party dimension, the executive-legislative relations and the territorial power-sharing arrangements. It argues that Brexit has brought to light several intertwined tensions that had been brewing inside British politics over the course of the previous years, and which are likely to continue unfolding for several years. Acknowledging the provisional nature of any assessment on such an on-going and rapidly changing process, it argues that the consolidation of the majoritarian elements in the British political systems – which characterized the first phase of the Brexit process from the referendum to the approval of the deal between the EU and the UK – has been severely tested. The process of realignment in the British party system and the further erosion of parliamentary support for the government in early 2019 produced a standstill whose endpoint is not yet in sight.*

**Key words:** Brexit, British political system, Sovereignty, Westminster model

### **1. Introduction**

Some years ago, reviewing three important books on the British constitution, David Marquand concluded that «the next chapter of British constitutional history is likely to be written on the continental side of the Channel».<sup>1</sup> And so it has, even if this has happened not *on*, but *against* the continental side. The 2016 EU referendum has made evident several intertwined tensions that had been brewing inside British politics over the course of the previous years, and which the months following the referendum (Brexit as a 'process') have further exacerbated.

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These tensions regard three dimensions along which the analytical framework on patterns of democracy first proposed by Arend Lijphart almost 35 years ago can usefully be adapted: the electoral-party dimension, executive-legislative relations and the territorial dynamics of power.<sup>2</sup> Underlying them, we find a tension on «sovereignty», centered around a key point: which domestic political institution is primarily in control of the Brexit process, and which one is likely to gain the Brexit outcome? Is it the government, the parliament or the people? Whitehall, Westminster or the devolved assemblies? Almost three years after the 2016 referendum these questions remain as crucial as ever. And yet, as the 'final' Brexit deadline is further shifted ahead, a definitive answer cannot be provided.

Here, we argue that the impact of Brexit on British democracy can usefully be assessed analyzing how the process of Brexit interacts with the dynamics of the Westminster model. We are aware that the current British political system is no longer, if it has ever been, the ideal-typical Westminster model described by Lijphart, having undergone some significant transformations in the last two decades or so. We are also wary of the danger of a *post hoc ergo propter hoc* fallacy, imputing any change or tension unfolding after the Referendum to Brexit itself.

Yet, the 'critical juncture' of Brexit represents a key trigger for change, further unsettling the precarious constitutional equilibrium in Britain. If the outcome of Brexit is still very uncertain, the process itself unveils some prominent tensions at the core of the British political system which, building on the conceptualisation proposed by Lijphart, this paper seeks to uncover.

## **2. The Westminster Model, the EU and Brexit**

To recall the essentials of the Lijphartian model, Westminster is a power-hoarding system dominated by the executive. The fabrication of single-party governments by the first-past-the-post electoral system was, in the period 1945-70, a textbook case of the majoritarian effects by which the electoral system turned a relative majority of votes into an absolute majority of seats. This made Westminster a proto-typical majoritarian political system – praised by the famous 1950 APSA report of the Committee on Political Parties as a «model» of stable and responsible party government – when the rest of Europe was re-founding democracy.

The Prime Minister, who is also the leader of her party, commands a clear majority and expects it to toe the party/government line. It is in this sense that the British Westminster system has been classically defined as an “elected dictatorship” (Lord Hailsham) while more recent assessments have maintained that the British executive dominates the legislature and wider polity. Additionally, legislative power is concentrated in the House of Commons, with recent reforms of the House of Lords arguably weakening the Upper House further.<sup>3</sup>

Turning to the vertical distribution of powers (unitary vs. federal), for long time the UK's political system was an example of a unitary and centralized government. At some point, with the abolishment of the Parliament of Northern Ireland in the early 1970s and the centralization reforms of the second Thatcher government in the mid-1980s, the actual British system virtually coincided with the ideal-typical Westminster model.

Granted, the actual fit between model and reality has always been disputed: Lijphart himself admitted that British politics was in close conformity with the Westminster model only from 1945 to 1970. Some authors have even called the model “a caricature” while, according to others, a decrease in majoritarianism has actually been observed during the coalition government (2010-15).<sup>4</sup> This assessment has found strong empirical backing in the scholarship assessing the influence of Parliament. Tracing the development of legislation, it has shown that the British Parliament is far from irrelevant in policy-making, having 'preventative influence' on the government and forcing it to focus

on 'anticipated reactions'. Systematically re-assessing the influence of the Lords, a revival of bicameralism at Westminster has also been noted.<sup>5</sup>

Mapping change on the Westminster system, Lijphart and most scholarship inspired by him do not seriously factor EU membership in. Yet, this is a serious omission as the debate on the repatriation of powers from Brussels to Westminster *ex adverso* reveals. Executive-legislative relations have changed in all the EU member countries *because* of membership, Britain included. As noted in a major study mapping the EU-isation of the Westminster Parliament: "It was always clear that once Westminster had enacted [...] the European Communities Act, the UK Parliament was never going to be the same institution again".<sup>6</sup> While Parliament has adapted to the challenge of integration –e.g., institutionalising standing committees – it remains in a relatively disadvantaged position vis-à-vis the executive. As a recent assessment put it, integration has not only curtailed the policy remit of national parliaments, but it has also produced a further shift of power towards national governments.<sup>7</sup>

Moving to the vertical distribution of power, at the same time in which the UK was accessing the then European Economic Community (EEC), some centre-periphery political dynamics started to unravel, in time leading to important reforms. The European Communities Act 1972 was pushed through Parliament in parallel with the Local Government Act 1972, which established a two-tier system (districts and counties) of elected local government and created the Greater London Council and six more metropolitan county councils (later abolished by the Thatcher government).

Most importantly, the electoral growth of the Scottish National Party (SNP) and Plaid Cymru (Plaid) in the early 1970s, also linked to their opposition to the UK's EEC membership 'on London terms', pushed the subsequent Labour government (1974-1979) to propose a devolution reform. This was stopped by the results of the 1979 referendums in Scotland and Wales. However, two decades later, an alignment between regionalism and Europeanization brought about the reforms that had failed in the late 1970s, resulting in the establishment of elected regional governments in Greater London, Northern Ireland, Scotland and Wales. Since then, devolution has proved to be more of an open-ended process than a single event, including even the holding of an independence referendum in Scotland in 2014. And yet, in spite of all reforms in the self-government powers of the devolved administrations, the UK system appears to be still closer to the unitary than the federal model, having failed to develop constitutionally entrenched mechanisms for intergovernmental relationships.<sup>8</sup> Last but not least, as we shall see in the next section, political parties have been challenged in their capacity to act cohesively as the dominant actors of the Westminster system by the rise of the European issue, even before the country became a Member state. Indeed, Brexit can be considered the result of progressive layering of tensions stemming from an early and powerful politicization of Europe, which soon became a potential catalyst for dissent inside both major parties, as well as the source for a birth of powerful Eurosceptic parties.

The Westminster system in Britain has therefore undergone significant developments, also triggered by EU membership. In this context, Brexit represents a 'critical juncture' to assert who is back in control. If it is Government and London (on behalf of the British state), rather than Parliament and the devolved administrations, Brexit is likely to revive the Westminster model as the best heuristic tool to understand the British political system.

In the rest of this paper we identify the main tensions which underlie the three dimensions mentioned above, i.e. the electoral-party dimension, executive-legislative relations and the territorial dynamics of power. We base our assessment on a wealth of primary and secondary data, including 41 original interviews with politicians, civil servants and academics involved (in various capacities) in the Brexit process.<sup>9</sup>

### 3. Brexit and the electoral-party dimension

In Lijphart's model the centrality of what we define here as the electoral-party dimension has always been evident. Except for the 1951 election, in every single election of the 1945-70 period the electoral system fabricated a majority, turning a relative majority of votes into a (generally) comfortable majority of seats. The all idea of the Westminster model is built on the prerequisite of a strong single-party majority government in parliament. Something which is now missing in Britain since the 2005 parliament. Theresa May's attempt to foster her parliamentary majority in 2017 famously backfired. At the same time, voters went back to support the two main parties: 42.4 percent for Conservatives, and 40 percent for Labour. In 1983, with the same percentage, Margaret Thatcher obtained a majority of 144 seats; in 2017 May lost her already slim majority.

In analysing the electoral-party dimension in 2019, we face a number of uncertainties: the tensions running throughout the party system have never been so profound and their dynamics so unpredictable. First, while the 2017 general election have given the two main parties the highest combined vote since the 1970 election, the ensuing months of negotiations have shown that both the Conservative and the Labour party are deeply divided on Brexit, by far the dominating issue in British politics since 2016. The 2017 return of a two-party format – which has no parallel in Europe in terms of the combined vote for the two major parties – cannot be isolated from what has happened in the (almost) two years heading to the 2019 European parliament elections, which might end up showing the ephemeral nature of the 2017 two-party vote.

Second, in the forthcoming European election, the exit from the EU is bringing about a very peculiar 'first-order election' – instead of the traditional 'second-order' model for EP election. Arguably, for the first time in the history of European elections, Brexit means that Europe (or, rather, the exit from it) is the dominating issue of the campaign. Not surprisingly, the EU-imposed calling of the election has triggered the emergence of a 'Brexit Party', led by former UKIP leader Nigel Farage (on the other side of the Brexit spectrum Change UK has been formed in February 2019, from the merger of 7 former Labour MPs and 4 Conservatives, initially known as 'The Independent Group'), whose result will be very important in determining the future shape of the party system.

Third – but we could certainly go on... – the unpredictability of British politics already evident since the 2016 referendum has reached a new stage with the delayed implementation of Brexit: while the unprecedented defeats that the government suffered in parliament are well known (but see next section), parties are being disrupted in their day-to-day management, as the narrow defeat of the proposal of new rules to challenge May's leadership just a few days before the selection of candidates for the European elections clearly testifies.<sup>10</sup>

Hence, given also the early stage of the process, before reflecting on a possible process of realignment, we must consider that the 'Brexit effect' on this dimension is more problematic to trace than in the next two: rather than on processes in which different institutions argue over the power to determine the final deal with the EU, on the electoral side we can so far mainly build our argument on a single electoral event, i.e. the snap election held in June 2017. This suggests putting the data in perspective and to be very cautious on the possible inferences that one might draw from a short-time comparison between the last two general elections.

Indeed, when one compares the 2015 election – in which incumbent Prime minister David Cameron put in the party manifesto the pledge for in IN/OUT referendum – with 2017, the contrast could hardly have been starker. In no other two consecutive electoral events did the indicators used by Lijphart (and others added here) experience such dramatic changes. To begin with, in terms of party system fragmentation, the collapse of UKIP (from 12.6 to 1.8 percent) was combined with the rise of the two-party vote (from 67.3 to 82.4 percent). Accordingly, fragmentation – assessed by the effective number of parties index – has significantly decreased. However, Brexit has not re-absorbed the Scottish

question. True, the SNP vote has declined from the 2015 breakthrough, but the party still retains 60 percent of the Scottish seats. Moving to England, the conservatives have gained votes in working-class constituencies that had voted for Brexit the year before. Similarly, Labour entrenched its vote in urban bulwarks. And yet, as notable as these tendencies were, they were “nothing like enough to restore the former ability of the electoral system to exaggerate systematically the lead of the largest party over the second party”.<sup>11</sup>

Turning to the disproportionality of the electoral system, the measure used by Lijphart (the Gallagher Index), is now considered the less precise among different indexes.<sup>12</sup> Indeed, both the Loosemore-Hanby and the Sainte-Laguë indexes show that the UK’s electoral system has historically been even more disproportional than Lijphart suggested. In 2017 we see a strong decrease with respect to 2015, from 32 to 10.1 (Loosemore-Hanby), 15.0 to 6.7 (Gallagher) or 23 to 12.0 (Sainte-Laguë).

However, when we consider electoral behavior, the last two General elections have displayed more similarities than differences. The standard indicator used by the literature is the volatility index, which measures the percentage of voters who changed their votes from one election to the other. In this respect, we record by far the highest levels of total net volatility ever seen since 1950 (respectively 17.8 and 15.5 as against an average level of 8.1 in the 1970-2010 period, or 4.6 in the 1950-66 period). This is a key point, as it shows that Brexit cannot isolate Britain from ‘continental’ dynamics of uncertainty and electoral turmoil which have affected all major democracies in recent times. Moreover, as a recent volume has underlined,<sup>13</sup> over the last half-century Britain has seen a growth in scope and intensity of anti-politics, whereby trust and identification with political parties are clearly in decline. Indeed, ‘Brexit is likely to make the situation much worse because it was offered as a simple solution to complex problems, problems which clearly it won’t “solve” ... As such, an increase in anti-politics is highly likely’.<sup>14</sup>

Europe has challenged the parties even before the country joined the (then) European Economic Community, in 1973, also contributing to the birth of new parties on both sides of the pro/anti Europe divide: the Social Democratic Party (SDP) in 1981, and one of the most successful Eurosceptic parties (in terms of votes and influence on the agenda, if not of parliamentary seats), the United Kingdom Independence Party (UKIP), in the aftermath of the Maastricht Treaty. Is Brexit now bringing about a major realignment in British politics?

To answer this question,<sup>15</sup> we should start from an important premise: given the high electoral threshold provided by the first-past-the post electoral system, realignments in British politics are particularly rare. In a long-term perspective, and implicitly considering realignments mainly in their relation to the party system rather than the mass dimension of electoral behaviour, Andrew Gamble<sup>16</sup> identifies three main types of party realignment:

1. A split initiated by a party leader – as happened in 1846 and 1931 –, with the formation of administrations with members of opposition;
2. A breakaway from party: as, for instance, with Joseph Chamberlain’s creation of the Liberal Unionist party in 1886 (but also in 1981, as mentioned above, with the SDP)
3. A party is taken over by a faction, as happened in 1906 with Balfour and tariff reform

If Theresa May fails to draw the support of Corbyn’s Labour for the approval of the Withdrawal agreement, the 2019 EP election will be a key test for the possible emergence of new paths of party realignment. Although the EP elections are normally associated with patterns of second-order elections, in which minor parties (and particularly Eurosceptic ones) get more votes, government parties are usually punished (unless the vote takes place within the first year of formation of a new

administration), these are not normal times, and the fragility of the two main parties can indeed be stretched in unsustainable ways. More specifically, the EP election will determine the possibilities of 'Change UK' to activate a new path or realignment, by consolidating the (hitherto) limited success in attracting MPs from the two main parties. Much more likely, however,<sup>17</sup> as far as the Brexit party is concerned, Farage's new party has already attracted 14 out of 24 MEPs elected with UKIP in 2014 and the declaration coming from local branches of the Conservative party<sup>18</sup> are more than an alarm bell for the party.

While it is clearly too early to locate 2019 in this three-fold typology, a more focused look at the role of Europe in triggering party dissent – and eventually realignment – provides interesting insights (Table 1).

**Table 1:** Party divisions on Europe and dynamics of realignment over the last half century

Year	Main trigger	Prime minister	Salience for Government /opposition	Initial size of majority	Europe as source of parliamentary divisions <sup>19</sup>	Cabinet- divisions (resignations)	Realignment ?
1971	EC entry terms	Heath	Low for both	30	Limited (average rebellion <10% on Europe for conservatives)	None	No, but Powell's support for Labour in Feb 1974 GE
1975	EEC referendum	Wilson	Mainly for government	3	Minor effect (loss of majority not due to Europe)	7 (including Foot, Benn)	None in the immediate, long-term Labour's drift to Left
1981	Withdrawal from EEC	Thatcher	Opposition (Foot)	44	-	None	Realignment : Labour just 2 points ahead of Alliance in 1983 GE
1992-93	Maastricht Treaty	Major	government	21	Loss of majority by late 1996	Minor, but Major challenged by Redwood in 1995	1997: Worst Tory defeat since 1906; rise of UKIP
2019	Brexit	May	Both, mainly government	Minority	Unprecedented	Unprecedented <sup>20</sup>	?

To conclude, it remains difficult to see a clear Brexit effect towards a more or less majoritarian electoral and party dimension. How much of the trends highlighted are related to the operation of the electoral system, how much to more long-term dynamics of rising electoral volatility (and volatile public opinion, as the erosion of the two-digit Conservative lead in the polls over Labour in 2017 testifies), and how much to the contingencies of the 2017 vote remains difficult to see.

After the 2019 EP election, we shall have more elements for assessing whether we are witnessing an important realignment in the party system

#### 4. Brexit and executive-legislative relations

In an institutional context where the Government is still dominant, notwithstanding a more influential role for Parliament, the impact of Brexit on executive-legislative relations remains ambiguous. On the one hand, the principal objective of Brexit is, in the words of the former Brexit minister David Davis, “for Parliament to take back control of UK laws and policies”. In this sense, if integration has taken powers away from Parliament, Brexit is engineered to repatriate them. In practice, however, both the complexity of exiting the EU and the structural advantage of the executive in leading the negotiations with the EU cast doubts on the capacity of Parliament to effectively be (back) in control.

The unfolding of the Brexit process, particularly at some ‘critical moments’ which this section places its focus on, reveals a significant tension between the executive and the legislative powers. Analytically, there are three elements where the ‘Brexit effect’ can be mapped out: the institutional involvement of Parliament; its scrutiny on the implementation of Brexit and its influence on the substance of Brexit (i.e. what particular Brexit the UK will eventually opt for).

Starting with the institutional involvement of Parliament, this was by no means certain in the early days of the Brexit process. As art. 50 of the Treaty of Lisbon only states that withdrawal should be in accordance with domestic “constitutional requirement”, the procedure to divorce from the EU could be understood as an ‘incomplete contract’ whose interpretation is left to the relevant domestic actors. The executive led by Theresa May embraced the idea that there should be a minimal role of the latter in triggering art. 50.

While the High Court later resolved the dispute in favour of Parliament – ruling that it is unlawful for the Government to rely on the royal prerogative to start the withdrawal process – and the Supreme Court eventually rejected the Government’s appeal,<sup>21</sup> the formal involvement of Parliament did little to alter the process. The Government fast-tracked a 133-word bill giving to the Prime Minister the power to notify the intention of the UK to withdraw from the EU. In just about six weeks, and despite two amendments passed by the Lords, Parliament approved an un-amended Bill. The process was more tortuous than the Government expected it to be, but the approval of the (Notification of) Withdrawal Act encountered little opposition. Crucially, the conservative party kept its unity throughout the different readings – with only 7 rebels at most – differently from the Labour party, which counted 52 rebels at third reading and several resignations from the shadow cabinet.

Another important trigger of conflict between the Government and Parliament centred on the so-called ‘Henry VIII’ powers – enabling ministers to amend or repeal primary legislation – contained in the EU Withdrawal Bill. The extent of delegation was huge, consisting – according to official estimates – in about 800/1000 statutory instruments needed to ‘correct’ the statute book for Brexit. Several clauses in the Bill attributed extensive powers to ministers, with little or no scrutiny from Parliament. At the second reading of the Bill in the Commons, the Government avoided a likely defeat promising to take on board the rebels’ observations on the Henry VIII’s powers, amending the bill accordingly and creating a new sifting committee for statutory instruments. Yet, there were serious questions on the capacity of this new mechanism to provide for an effective scrutiny of the executive,<sup>22</sup> which were to some extent addressed after the Government accepted to further compromise on a Lords’ amendment.

Yet, the most serious institutional controversy was on the so-called ‘meaningful’ vote on the final Brexit deal negotiated with the EU. The importance of the ‘meaningful’ vote is both institutional – as the Government was initially sceptical on the need for a parliamentary vote, but eventually conceded

that Parliament would be able to vote on a 'take it or leave it' basis – and substantive – as a 'meaningful' vote compels Parliament to think about alternatives, should the Brexit deal proposed by the Government be rejected.

As for its institutional role, several MPs were disappointed to hear that Parliament could only accept or reject the deal – the latter option meaning that the UK could exit the EU without a deal – without introducing any amendment. In December 2017, the Commons passed an amendment (proposed by the Conservative MP Dominic Grieve) with a majority of four – the first parliamentary defeat for the Government on Brexit, made possible by a rebellion of 12 Tory MPs – limiting the power of ministers to implement the withdrawal agreement with the EU until Parliament had enacted a statute approving it. In May 2018, the Lords further amended the EU Withdrawal Bill, requiring the Government to “follow any direction” indicated by a Commons’ resolution if either the former’s deal with the EU had not been approved by Parliament, or in case of no deal. The Government immediately refused to receive a strict mandate from Parliament. Eventually, a compromise solution was agreed and, in either circumstance, the Government would have tabled a motion on how it intended to proceed further, which Parliament could amend.

Despite the enhanced role which Parliament successfully fought for, the default option in case of no agreement with the EU, or rejection of the deal at Westminster, remained 'no deal' (which the Prime Minister had strongly endorsed, claiming that “no deal is better than a bad deal”). However, as the Government finally concluded its negotiations with Brussels towards the end of November 2018, the position of the Government became considerably more difficult. Back in London, it soon realised that there was no majority for its deal at Westminster. In December, the 'meaningful' vote was finally postponed after four days of debate in the Commons. On 15<sup>th</sup> January, the House of Commons rejected Theresa May’s deal with the EU with an extraordinary majority of 230. On 12<sup>th</sup> March, when the same agreement was brought back to the Commons, the Government lost by 149 votes. On 29<sup>th</sup> March, a vote on the withdrawal agreement only (i.e. without the accompanying political declaration) was lost again by the Government (if 'only' by a majority of 58). This astounding series of defeats compelled the Government to seek an extension of art. 50 – eventually granted by the EU-27 – but did not help find an alternative to *the* Brexit path chosen by the Prime Minister.

Indeed, Parliament held a series of 'indicative votes' on the different options for Brexit – the custom union, the Norway model, the second referendum etc. The votes were in fact *indicative* – not legally binding for the Government – but, in any case, neither on March 27<sup>th</sup>, nor on April 1<sup>st</sup>, when the indicative votes had been scheduled, any option received a majority. Parliament had been clear on what it did not want: Theresa May’s deal. Yet, MPs could not coalesce around any of the alternatives, failing to suggest a different course of action.

The other option that a majority of MPs did not endorse was that of crushing out of the EU. As the possibility of a no-deal Brexit loomed larger and larger, a Private Member’s Bill moved by backbenchers Yvette Cooper (Labour) and Oliver Letwin (Conservative) required the Government to table a motion seeking an extension of art. 50 (effectively 'ruling out no deal'). The bill was fast-tracked in Parliament, with all stages approved in one day in the Commons, and clearing the Lords in two sitting days. Such a speedy approval shows that Parliament is able to take back control but, to do so, needs to stretch and possibly overcome established rules and conventions.<sup>23</sup> This was the last of a series of disputes over parliamentary procedure, and other notable examples include the decision of the Speaker to allow an amendment to the business motion and the Letwin’s amendment to allow the House of Commons to take control of the Parliamentary schedule.<sup>24</sup>



These institutional tensions show that ‘taking back control’ is a complicated matter. On the one hand, given the complexity of negotiating Brexit, and the tight timeframe for its implementation, the executive is, and is keen to remain, in the driving seat – thus strengthening the majoritarian traits of the British institutional system. Ultimately, “it is the government who is in charge of these processes” and the House of Commons “has not been willing to take that next step to actually control outcomes” (interview O). In other words, Parliament has been pushing hard for its formal involvement but, ultimately, has not managed (so far) to significantly alter the direction of Brexit. Despite three sounding rejections, Theresa May’s deal still remains the sole Brexit plan currently on the table.

Yet, Parliament has not been a passive spectator. It could count on a fundamental constraint on the power of executive:<sup>25</sup> the need for the minority government to secure the support of all backbenchers – in a context of deep intra-party divisions on integration (see Section 3) – or reach out to the opposition and compromise with the Labour party. If anything, the process of Brexit so far has revealed that “the supremacy of the executive over the legislature is contingent on the legislature’s willingness to cooperate with that supremacy” (interview W) which, in turn, largely depends on the cohesion of the governing party. With the Tory party increasingly split, and party discipline largely gone, the ‘meaningful’ vote challenged the fundamental feature of the Westminster model (the ‘efficient secret’ famously described by Walter Bagehot).

This challenge still remains contingent – twice: on minority government, and on the issue of Brexit (on other policy areas, more traditional dynamics are at play; see Interview Z) – and (so far) has not fundamentally altered the structural balance of power between the executive and parliament.

## **5. Brexit and the territorial question(s)**

Brexit provides both an opportunity and a threat for the devolved governments of Northern Ireland, Scotland and Wales. The opportunity stems from the prospect of gaining some of the repatriated powers and, in the process, to re-assert the multi-national character of the UK, also by strengthening some constitutional guarantees for the devolved administrations. The threat is primarily linked to a persisting conception of the UK as a unitary (albeit devolved) state, which is fed by the dominant demographic weight of England vis-à-vis the three other UK regions and which appears to be still strongly rooted amongst certain sectors of the British political elites, particularly within the governing Conservative party. Indeed, both the way Brexit was decided and the way Brexit is tried to be implemented provide some confirmation of this die-hard unitary and centralistic mentality. As a consequence, several tensions are arising from the territorial dimension of British politics. Some are cross-cutting, such as the (putatively) negative economic consequences of Brexit and the re-allocation of the repatriated competences between London and the devolved administrations. Some are region-specific, depending on past and present ethno-political conditions, as well as on the interplay between voters and political elites in their respective position towards Brexit at the time of the 2016 referendum. Overall, the territorial dimension has been primarily politicized by the Scottish government which, being controlled by a minority nationalist and pro-independence party, the Scottish National Party (SNP), has proved to be the most assertive. However, in some occasions, Edinburgh has been joined and/or supported by other devolved institutions in its political and judicial struggle against London.

A crucial tension, which set the stage for many future developments, originated from the choice of the Cameron government to take a decision on Brexit via a simple UK-wide referendum, without any specific consideration for the preferences of the different ‘nations’ and their respective regional administrations. This choice created a potential legitimacy question, as the demographic dominant position of England could drag the other regions into Brexit against their will, which is what actually

happened.<sup>26</sup> As shown in table 2, like in the rest of the UK, all the three regions had a disproportionate level of support for Leave vis-à-vis the cues coming from the most representative parties.

**Table 2:** Party position on Brexit referendum and party vote shares in the 2016 devolved elections (and Brexit referendum results)

<i>Parties*</i>	<i>Northern Ireland</i>	<i>Scotland</i>	<i>Wales</i>
Conservative Party/UUP	Remain (12.6)	Remain** (22.9)	Leave*** (18.8)
Labour Party/SDLP	Remain (12.0)	Remain (19.1)	Remain (31.5)
Lib-Dem Party (LD)/Alliance	Remain (7.0)	Remain (5.2)	Remain (6.5)
UK Independence Party (UKIP)	Leave (1.5)	Leave (2.0)	Leave (13.0)
Scottish National Party (SNP)	-	Remain (41.7)	-
Democratic Unionist Party (DUP)	Leave (29.2)	-	-
<i>Sinn Fein</i> (SF)	Remain (24.0)	-	-
<i>Plaid Cymru</i> (PC)	-	-	Remain (20.8)
Greens	Remain (2.7)	Remain (6.6)	Remain (3.0)
Traditional Unionist Party (TUP)	Leave (3.4)	-	-
People Before Profit	Leave (2.0)	-	-
<b>Overall (party vote shares)</b>	<b>36.1 (L) vs. 58.3 (R)</b>	<b>2.0 (L) vs. 95.5 (R)</b>	<b>31.8 (L) vs. 61.8 (R)</b>
<b>Regional government</b>	<b>Split (DUP-SF)</b>	<b>Remain (SNP)</b>	<b>Remain (Lab-LD)</b>
<b>Actual referendum results</b>	<b>44.2 (L) vs. 55.8 (R)</b>	<b>38.0 (L) vs 62.0 (R)</b>	<b>52.5 (L) vs. 47.5 (R)</b>

Source: Electoral Commission. Data available at: <https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums>

\*For practical reasons some Northern Irish regional parties have been associated with the closest state-wide party, even if they do not have (anymore) formal agreements: the Ulster Unionist Party (UUP) with the Conservatives, the Social Democratic and Labour Party (SDLP) with Labour, the Alliance with the Lib-Dems. The label “Greens” refers to the Green Party of N.I., the Green Party of England and Wales (for Wales) and the Scottish Greens.

\*\*Not all the Scottish conservatives were pro-Remain but the leadership of the regional party was clearly in favour of Remain

\*\*\*Not all the Welsh conservatives were pro-Leave but the leadership of the regional party was clearly in favour of Leave

Yet, leaving this common feature aside, important differences can be pointed out. First, Scotland and Northern Ireland voted in favour of Remain, whereas in Wales the victory of Leave (and support for the UKIP) was rather in line with the UK average. The legitimacy question, therefore, arose only in Scotland and Northern Ireland but not in Wales, where the largely pro-Remain political elites – the governing parties (Labour and Lib-Dems) and the main opposition party (Plaid Cymru) - found themselves in a rather difficult position. Secondly, even the two pro-Remain regions boast crucial differences. In Northern Ireland, the Brexit vote was territorially split, reflecting a two-fold division: between the two ethnic communities and within the unionist/protestant ethnic community. Indeed, while the republican/catholic areas voted overwhelmingly in favour of Remain, the unionist/protestant areas voted by small margins either in favour of Remain or of Leave. This division within the unionist community, in turn, reflected the different positions adopted by the unionist parties, with the dominant DUP (and the TUP) being pro-Leave and the UUP being pro-Remain. However, the most politically salient division remains the one between the two ethnic communities and between the respective main parties (DUP and *Sinn Fein*), which left Northern Ireland, first, with a deeply divided government and then, since January 2017, without a government at all. Considering that the *Sinn Fein*'s elected candidates in general elections do not take their seats in Westminster and

that the DUP's MPs became crucial for the survival of the May government after the 2017 snap election, Northern Ireland finds itself in the paradoxical position of having voted for Remain but being represented exclusively by disproportionately powerful hard-Brexiteers in London (and having no government in Belfast). In contrast, in Scotland, the pro-Remain vote prevailed all over and confirmed the orientation of the overwhelming majority of the political elites, starting from the governing SNP. Under these conditions, the Scottish institutions and the SNP's group in Westminster (the third largest) could coherently fight not only to try and limit the alleged damages of the Brexit process for Scotland but also to try and block/reverse Brexit.

The first occasion for the Scottish government to try and block Brexit materialized in November 2016 with the appeal of the legal case *Miller vs. Secretary of State for Exiting the EU* before the Supreme Court. In fact, both the Scottish and Welsh governments joined the appeal invoking the Sewel Convention and, thus, advocating their right to negate their consent to Westminster legislation for UK's withdrawal from the EU. However, in January 2017 the Supreme Court declared that, although the preservation of harmonious relationships between Westminster and the devolved administrations is an important political asset, the Sewel Convention remains a political convention and, therefore, "the policing of its scope and the manner of its operation does not lie within the constitutional remit of the judiciary".<sup>27</sup> While this decision did not rule out the prerogative of the devolved legislatures to withdraw their consent to UK legislation touching upon devolved matters, it clearly upholds a traditional vision of the UK as a unitary state, without recognized shared-rule powers (let alone veto powers) for the devolved administrations.

The second challenge faced by the devolved administrations was the drafting of the European Union (Withdrawal) Bill, which became law in June 2018. Although the creation of a Joint Ministerial Committee on EU Negotiations, flanked by a Ministerial Forum on EU negotiations, appeared to recognise the multi-national and devolved nature of the British constitutional system (interview with AB), the negotiation between London and the devolved administrations seemed to have come to a deadlock in early 2018, when it became clear that the UK government was aiming to withhold powers for up to seven years over twenty-four repatriated policy areas that would pertain to devolved competences. The Welsh and Scottish parliaments reacted in March 2018 by passing their respective Continuity Bills, which prescribed that all repatriated policy areas under devolved competences should be directly attributed to devolved administrations. However, the strategies of the two devolved governments diverged after a month of further inter-governmental negotiations. The Welsh government reached an agreement with London, promising to scrap the Welsh Continuity Act, which it did in November 2018. In contrast, Edinburgh stood by its position and in May 2018 it voted a denial of consent to the European Union (Withdrawal) Bill. Although the stance adopted by Holyrood can be attributed to the confrontational attitudes of the SNP, it is important to notice that all Scottish parties, with the exception of Scottish Conservatives, have voted the Continuity Bill and the denial of consent. The Scottish political assertiveness has opened up a new constitutional clash, as the UK government appealed against the Scottish Continuity Bill before the Supreme Court in April 2018. The Scottish Parliament's case was also supported by legal representatives of both Welsh and Northern Irish legislatures. However, after months of waiting, the Court's sentence came out in December 2018 and once again it was in favour of the central UK institutions. Indeed, the substance of the sentence was that the provisions of the European Union (Withdrawal) Act 2018 are protected against modification and, therefore, they override and make null the diverging/contrasting provisions contained in the Scottish Continuity Bill.<sup>28</sup>

Finally, two specific issues arising from the territorial dimension are worth mentioning for their extreme importance, albeit in a purely speculative way. First, should the process of Brexit be

conducted with a too evident centralistic approach or should the Brexit outcome be considered as strongly penalizing for Scotland, a resurgence in Scottish independentism cannot be ruled out. The SNP government has made it clear that, if the Brexit process goes on, it feels entitled to call a new independence referendum whenever it deems it appropriate. So far, support for independence has remained more or less at the same level as in the 2014 referendum. However, some Scottish voters might change their minds once the terms of the deal between the EU and UK have become clearer. In addition, the pro-independence camp gained a lot of ground during the campaign for the 2014 referendum. If this trend was to be repeated, even to a much smaller extent, the secessionist side would probably win the contest.

Secondly, the issue of the Irish border might have serious consequences not only on the economy of Northern Ireland but also, more crucially, on the preservation of peace and stability in the region. The mere debate on two competing options – a hard border across Ireland vs. a hard border between Ireland and Britain - is already reigniting identity politics, re-awakening ‘the border of the mind’ between communities, and throwing salt on unhealed injuries.<sup>29</sup> In addition, the fact that the current Conservative Government depends on the parliamentary support of the Democratic Unionist Party (DUP) only makes the issue more contentious. Indeed, the Irish border is emerging as the thorniest issue in the prolonged negotiation between the UK and the EU on the Withdrawal Agreement, with the DUP and some Conservative MPs repeatedly rebelling against the so called ‘back-stop’ provision.

All in all, the situation appears to be still fluid, with devolved administrations (Scotland *in primis*) determined to keep their ground and with possible destabilizing backlashes: secessionism in Scotland and ethnic violence in Northern Ireland. In the long term, it is logic to expect that the devolved administrations will be strengthened by the acquisition of some repatriated competences. However, the current trajectory appears to suggest that the Brexit process is conducted under the basic assumption of a unitary state and that the UK government is determined to ‘run the show’, including in the repatriated (theoretically devolved) policy areas. This would represent, albeit only temporarily and in relative terms, a recentralization dynamic. It is also important to notice that all sentences by the Supreme Court, in spite of devoting the due consideration to the complex devolution settlement of the UK, have *de facto* upheld and strengthened, so far, the position of the central institutions vis-à-vis the devolved ones.

## 6. Conclusions

Brexit can well be regarded as a process of re-definition and re-allocation of sovereignty. However, beyond the crucial debate on formal and substantive sovereignty at the end of the Brexit process (e.g. the risk of becoming a formally independent but *de facto* ‘vassal state’), it is important to discuss which domestic institutions lead the process of Brexit and how the repatriated powers are allocated.

Taking Lijphart’s Westminster model as a benchmark for the British political system, we have briefly outlined how the actual system has gradually diverged from the ideal-typical model since joining the EEC/EU. We then tried to discern trends and patterns that appear to have emerged since the Brexit referendum. This is no easy task, as in our relatively short timeframe (June 2016 – March 2019) the emerging trends tend to be fragile, complex, and even contradictory. In this context, while longer term scenarios are difficult – if not impossible – to foresee, some firmer consideration on the current tensions and their meaning for the Westminster model can be advanced.

On the electoral and party system dimension, several points can be made. In general, given the blatant failure of the 2011 referendum on electoral reform, the FPTP voting system, which has been a

cornerstone and a guardian of the Westminster model, is no longer under pressure. More specifically, the results of the 2017 General election have represented a stark break vis-a-vis pre-Brexit trends, with the two main parties' share of vote being the highest since 1966. However, in contrast to the Westminster model, the 2017 election produced a hung parliament and a minority government. Perhaps most importantly, the extent to which the new two-party system is consolidated is very much a moot point. Once more, the EU is proving to be a very divisive issue for British parties. New patterns of dealignment and realignment can be observed. The EP elections in May 2019 – where a proportional system is used – may well see the success of new parties (like Farage's Brexit party and Change UK) competing on the integration dimension, and the difficulties of the conservative party.

On the executive-legislative dimension, we have detected a very assertive, if not aggressive, posture of the Government up to the end of 2018. The executive was ready to bypass Parliament for the triggering of art. 50 and tried to expand its powers via delegated legislation and the use of statutory instruments. This is all well justified in the light of the complexity of Brexit and the need to take swift decisions under tight deadlines. The key turning point was the deal with Brussels on the withdrawal agreement and the political declaration in November 2018. At that point, the parliamentary conservative party started to rebel against 'its' Government on an unprecedented scale. 'Meaningful' vote after 'meaningful' vote the Brexit day was finally postponed. Yet, the final Brexit destination remains unknown: if Parliament has been clear on what it did not want (i.e. Theresa May's deal and a no-deal Brexit), it has at the same time been unable to come up with alternative plans.

Finally, the territorial dimension appears to show some emerging trends of a temporary move in the direction of the Westminster model. To be sure, devolved administrations and their powers are there to stay. In addition, in the long run, these powers are likely to increase with the acquisition of the repatriated competences. However, for the time being, the devolved administrations have *de facto* lost two legal battles before the Supreme Court: one testing their power to block Brexit and one testing their power to control the institutional effects of Brexit. Indeed, the EU Withdrawal Bill envisages a dominant role of the UK Government in the management of repatriated powers, included those falling in devolved policy areas for up to seven years. As for Northern Ireland, the May government has agreed a back-stop solution with the EU that would guarantee the border to remain open. However, part of the governmental majority (the DUP and the Conservative hard-Brexiters) has been refusing to accept this provision, leaving a big question mark not only the border issue but also on future peace and stability in the region.

The process of Brexit has tested the institutional set-up of the British political system. If Europeanisation has unleashed change, breaking away from the EU is also leading to significant adaptation. Given the uncertainties over the Brexit outcome, any long(er) term assessment remains built on sand. Yet, the process of Brexit itself presents contradictory features. After an extended period in which the executive has been in the driving seat, and able to keep a grip over parliament and the devolved administration – thus seemingly reinforcing the Westminster traits of the British political system – the three months leading to the (first) Brexit day on March 29<sup>th</sup> changed the scene. In addition, several other developments would appear to suggest that the process of Brexit is moving the British political system further away from the original Westminster model: new tensions and even splits in the Governing party and a possible reshuffle of the British party system; the issue of the Irish border and the resurgence of the Scottish independentist call; and the attempts of the House of Commons to 'take control' (out of the executive's hands) of Brexit. And yet, structural changes need more time to be fully appreciated and, although important tensions are present in all three dimensions of our analysis, it is a huge challenge for the main actors to think 'out of the box' and go beyond the rules, conventions and habits that the Westminster model has so powerfully structured.

## ENDNOTES

- 1 D. Marquand. 'The Once and Future Constitution'. *Government and Opposition*, 46:2, 2011, 274-292. See also G. Baldini & A. Pareschi, The Multiple tensions of British Democracy. *Revue Internationale de Politique Comparée*, 24: 1-2, 2017, 159-177.
- 2 A. Lijphart, *Democracies. Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, London, Yale University Press, 1984
- 3 F. Matthews & M. Flinders, 'Patterns of democracy: Coalition governance and majoritarian modification in the United Kingdom, 2010-2015', *British Politics*, 12:2, 2017, p. 157; A. Lijphart, *Patterns of Democracy*, 2<sup>nd</sup> ed. New Haven and London, Yale University Press, 2012, p. 81.
- 4 A. Lijphart, 1984, *cit.*, p. x; G. Jordan & P. Cairney, 'What is the 'dominant model' of British policymaking? Comparing majoritarian and policy community ideas'. *British Politics*, 8:3, 2013, p. 243; F. Matthews & M. Flinders, 2017, *cit.*
- 5 M. Russell & P. Cowley, 'The policy power of the Westminster parliament', *Governance*, 29:1, 121-137, 2016; M. Russell, *The Contemporary House of Lords: Westminster Bicameralism Revisited*. Oxford, Oxford University Press, 2013.
- 6 P. Giddings & G. Drewry, *Britain in the European Union – Law, Policy and Parliament*, Basingstoke, Palgrave Macmillan, 2004, p. 2. For a comparative analysis, see T. B. Hansen & B. Scholl, 'Europeanisation and Domestic Parliamentary Adaptation: A Comparative Analysis of the Bundestag and the House of Commons', *European Integration Online Papers (EIoP)*, 6:16, 2002.
- 7 G. Gee & A. L. Young, 'Regaining Sovereignty, Brexit, the UK Parliament and the Common Law', *European Public Law*, 22:1, 2016, 131-147.
- 8 J. Gallagher, 'Intergovernmental relations in the UK: Co-operation, competition and constitutional change', *British Journal of Politics & International Relations*, 14:2, 2012, 198–213.
- 9 Interviews were conducted in London (in two-rounds: December 2018 and February 2019) and Edinburgh (February 2019). Interviews have been tape recorded and anonymised to comply with ethical standards. Please see the Appendix for additional details.
- 10 S. Payne & L. Hugues, Tories rule out early leadership challenge to Theresa May, Financial Times 24 April 2019
- 11 J. Curtice, 'How the Electoral System Failed to Deliver – Again-', in J. Tonge, C. Leston-Bandeira & S. Wilks-Heeg (eds). *Britain Votes*. Oxford, Oxford University Press, 2018, p. 33.
- 12 See A. Renwick, *Was the 2015 election the most disproportional ever? It depends how you measure it*, Constitution Unit blog, 29 June 2015. Also, A. Renwick, *The performance of the electoral system: strengthening or weakening the case for reform?*, Constitution Unit blog, 14 June 2017.
- 13 N. Clarke, W. Jennings, J. Moses and G. Stoker, *The Good Politician. Folk Theories, Political Interaction and the Rise of Anti-Politics*, Cambridge, Cambridge University Press, 2018.
- 14 D. Marsh, Brexit and the politics of truth, *British Politics*, 13, 2018, 79-89.
- 15 Space constraints limit our capacity to work on a second possible avenue of research, namely the constraints coming from the rank-and-file. Research on party membership has shown that the leaders of both main parties are somehow not in line with the preferences expressed by their members: the Conservative basis is more 'brexiteer' than the leadership, and the Labour base is more in support of remain – or more vocal on the need of a confirmatory second referendum – than the party leadership (see work by T. Bale, P. Webb and M. Poletti in <https://esrcpartymembersproject.org/category/party-members/>, particularly the blogs 'Love

- Corbyn, Hate Brexit', and 'No deal is better than May's deal', 2 and 4 January 2019, respectively).
- 16 A. Gamble, The Realignment of British Politics in the wake of Brexit, *Political Quarterly*, 90, 2019, S2, 177-186.
- 17 T. Bale, "Forty years ago, Thatcherism swept Britain. Could our new parties repeat the trick?", *The Observer*, 28 April 2019.
- 18 In a survey held in mid-April 2019, over forty percent of the Conservative Municipal councilors interviewed declared their intention to vote for the Brexit party in the 2019 European election.
- 19 P. Cowley & P. Norton, Rebels and rebellions: Conservative MPs in the 1992 Parliament, *British Journal of Politics and International Relations*, 1 (1999), 84-105
- 20 Institute for Government, Whitehall Monitor 2019
- 21 M. Gordon, 'Brexit: a Challenge for the UK Constitution, of the UK Constitution?', *European Constitutional Law Review*, 12:3, 2016, pp. 436-7.
- 22 Figures provided by the Department for Exiting the European Union, cited in R. Fox, J. Blackwell & B. Fowler, *Taking Back Control for Brexit and Beyond. Delegated Legislation, Parliamentary Scrutiny and the European Union (Withdrawal) Bill*, London, Hansard Society, 2017, p. 10. See also G. Gee & L. Young, 2016, p. 12 and J. Blackwell, *Scrutiny of the European Union (Withdrawal) Bill*, London, Hansard Society, 15.01.2018.
- 23 As stated in the House of Commons by the Conservative MP Sir Bill Cash: "The Cooper-Letwin Bill (supported by Reversers and Rejoiners) is to be rammed through the Commons in defiance of established centuries old procedures in order to delay and reverse Brexit by Act of Parliament. It is outrageous". For a more detailed assessment, see M. Thymont Jack, "Parliament acts fast to keep control of Brexit", Institute for Government, 04 April 2019, <https://www.instituteforgovernment.org.uk/blog/parliament-acts-fast-keep-control-brexit>
- 24 See M. Russell, 'Should we worry if MPs seize control of the parliamentary agenda?'. UCL Constitution Unit, 27 January 2019, <https://constitution-unit.com/2019/01/27/should-we-worry-if-mps-seize-control-of-the-parliamentary-agenda-where-could-that-lead-politics/#more-7538> . As stated by one of our interviewees: "There's clearly been some serious strains placed on some of the conventions and rules around, for instance and most recently, control of the parliamentary agenda. *To some extent we've entered into quite unfamiliar, if not totally uncharted, territory there*" (Interview X).
- 25 For a systematic analysis of these aspects, see M. Russell & P. Cowley, 'Modes of UK Executive-Legislative Relations Revisited', *The Political Quarterly*, 89:1, 2018.
- 26 A. Henderson, C. Jeffery, D. Wincott and R. Wyn Jones, 'How Brexit was made in England', *British Journal of Politics and IR*, 19:4, 2017, 631-646.
- 27 UK Supreme Court ruling (2017), quoted and commented in A. McHarg and J. Mitchell, 'Brexit and Scotland', *British Journal of Politics and International Relations*, 19:3, 2017, 512-526
- 28 Supreme Court ruling, 13 December 2018: <https://www.supremecourt.uk/cases/uksc-2018-0080.html>
- 29 C. Gormley-Heenan and A. Aughey, 'Northern Ireland and Brexit: Three Effects on 'the border to the mind'', *British Journal of Politics and International Relations*, 19:3, 2017, 497-511. See also The Atlantic, "Brexit could reawaken Northern Ireland's troubles", 07 March 2019.

## APPENDIX

### List of interviews

Progressive code	Role	Date	Place
A	Political scientist	10th December	London
B	Local government expert	10th December	London
C	Constitutional expert	10th December	London
D	Political scientist and historian	12th December	London
E	Plaid Cymru MP	12th December	London
F	Political scientist	14th December	London
G	Political scientist	14th December	London
H	Labour MP	17th December	London
I	Political scientist	17th December	London
J	Historian and former politician	17th December	London
K	Conservative Lord	18th December	London
L	Constitutional expert	18th December	London
M	SNP MP	19th December	London
N	Clerk at House of Commons Library	11th February	London
O	Constitutional expert	11th February	London
P	Lib Dem MP	12th February	London
Q	Plaid Cymru MP	12th February	London
R	Political scientist	12th February	London
S	SNP MP	13th February	London
T	Conservative MP	13th February	London
U	Constitutional expert	13th February	London
V	SNP MP	13th February	London
W	Constitutional expert	13th February	London
X	Constitutional expert	14th February	London
Y	Specialist for House of Commons Committee	14th February	London
Z	Political scientist	15th February	London
AA	Institute for Government experts	15th February	London



AB	Territorial politics expert	18th February	Edinburgh
AC	Scottish government civil servant	18th February	Edinburgh
AD	Political scientist and law expert	18th February	Edinburgh
AE	Northern Ireland experts	19th February	Edinburgh
AF	Conservative MSP	19th February	Edinburgh
AG	Green MSP	19th February	Edinburgh
AH	Territorial politics expert	19th February	Edinburgh
AI	Labour MSP	20th February	Edinburgh
AJ	SNP MSP	20th February	Edinburgh
AK	Labour MSP	21th February	Edinburgh
AL	Lib Dem MSP	21th February	Edinburgh
AM	SNP MSP and Minister	21th February	Edinburgh
AN	Territorial politics expert	4th March	Skype interview
AO	Political scientist	7th March	Skype interview