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**BREXIT, DEVOLUTION AND THE CONSTITUTIONAL
IMPLICATIONS FOR THE UK: *PROSPECTS FOR CHANGE***

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Brexit, Devolution and the constitutional implications for the UK:
*Prospects for change***

ABSTRACT: *The following six points provide a useful framework to explore the current (and potentially future) constitutional tensions within the UK as a result of both Brexit and the Devolution Deals introduced by the Labour Government elected in 1997.*

Point one: Devolution addressed constitutional innovations in part but missed the big challenge for the whole of the UK

There are three important dimensions to the Devolution debate in the UK since 1945. They are all linked but have not been sufficiently addressed by politicians of either of the major parties. Firstly, the UK is a highly centralised state. The administrative sub units below Parliament (local Government) are legally dependent on their existence to Parliament. They do not have legal or political autonomy. This is crucial in understanding or assessing the relationship between Parliament and the cities, towns and regions of the UK. The primacy of Parliament in effect the House of Commons) is central to examining what and why Devolution took place. The UK is not a federal state where power and decision making at the region or local level is secured and protected through legal and constitutional rights. Secondly, the different patterns, structures and responsibilities to be found in the three settlements after 1997 confirm this: Scotland has a Parliament and the right to raise taxes whereas Wales and Northern Ireland have Assemblies with limited powers and responsibilities. Thirdly, the 1997 Devolution initiatives were mixed in what they were responding to. In Scotland there was a recognition that there existed a broad alliance in favour of a separate set of arrangements and Devolution was designed to limit independence. In Wales there is a nationalist movement but not yet a sufficiently influential coalition of interests to make the same case in Scotland. Northern Ireland had been given a constitutional settlement in 1921 but it was one which did not have widespread community support. The Peace Process was intended to limit moves for full independence by creating a new structure based on power sharing; changes to the constitutional arrangements in the Irish Republic and continued membership of the European Union to secure economic and social investment.

The big challenges all of these missed were both the constitutional settlement of England and the primacy of Parliament to change the rules and processes by which each of the devolved nations operated.

Point Two: Devolution ignored the Empire Question but Brexit faced it directly

The focus on the primacy of Parliament and the reluctance (or opposition) to federal solutions are reminders that the UK are reluctant (at best) to change their structures or at least the underpinning power and authority which gives them legitimacy. Arguably we can trace this back over the last 300 plus years and, importantly, the rise of empire. The creation of the UK was (and is) an artificial construct. It reflected the dominance of the English over the Scots, Welsh and Irish. Acts of union

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gave a cover for the creation of the *United Kingdom* but it remains a incomplete set of arrangements with contradictory policies and processes in place. In some respects this can be viewed as a microcosm of empires. The dominant power establishes authority and maintains that through different strategies (from coercion to cooperation) and over time loses legitimacy and power.

A key contradiction in the settlements after 1997 was the acceptance that whilst the devolved nations might have responsibility for services (especially health and social care) those same services in England were subject to regulation and control by Parliament in which sat MPs from the devolved nations: as an MP from Scotland you could decide on the health policy of England but not the other way around. This unresolved puzzle illustrates how resistant politicians from across both parties were to follow the logic of Devolution. Advocates of Brexit understood this. And their campaign was one which focussed on a return to the idea of the UK being a sovereign state and so, they are opposed to the ‘break up ‘ of the UK through independence movements.

Point three: UK Devolution logic calls for an English Assembly or Parliament

There is no systematic approach to the Devolution approach adopted by UK political leaders (and their advisers) and the inconsistencies are very clear. The primary focus has been to ensure that Parliamentary sovereignty and oversight remains. In this approach certain institutions remain unchanged (the House of Commons and the House of Lords) and whilst some changes have been adopted (the UK now has a separate from the House of Lords Supreme Court and there have been changes in who sits in the House of Lords) essentially the authority of the House of Commons has not been checked. Electing the House of Lords might be seen as containing the House of Commons. This failure to act on the logical inconsistencies suggests that, at best, the logic of reforming the House of Commons is appreciated but resisted or that the inconsistencies are not recognised or appreciated. My own view is that they are and they are resisted.

Point four: Cities and city regions are the limited but acceptable solution for Devolution in England

Successive UK governments have experimented with different approaches to devolving greater responsibility for services and planning to regions in England. Both major political parties have adopted measures which focus on administrative devolving of authority whilst retaining power in London. The unit by which these approaches have been based has varied significantly over the last fifty plus years in the UK from small geographical units (a neighbourhood) to slightly bigger ones (a city) to larger ones still (city region). Currently, since 2010, the UK but really England have a number of ‘city regions’ with locally elected mayors and with defined responsibilities. To make it more confusing not all city regions have the same powers. Modelled on how the local governance of London works this new approach has, already, led to some unintended consequences. It was assumed that by limiting the powers of the elected mayors they would have to focus on meeting their legal duties and be politically contained. Covid 19 has changed that. Elected mayors in England covering the big centres of population have been speaking out about the Government’s policies and actions. So whilst they have no legal duty to act they have focussed on the impact on the economy and social questions (poverty, jobs, quality of life). The city regions are not a substitute for an English assembly. But, they do provide another example of inconsistent policy making and design.

Point five: Brexit

There are issues which are necessary to reflect on when trying to understand Brexit. Firstly, whatever the global examples of declining trust in political institutions and civic leaders and agencies

from Trump to Orban Brexit is a domestic dispute. Essentially, it is an internal conflict within the ruling Conservative Party which has led to the resignation or electoral defeat of the last four Conservative Prime Ministers (including Margaret Thatcher but not yet including Boris Johnson). This internal ‘family’ conflict which has split the Conservative Party following the Brexit referendum could yet lead to a more profound split. Secondly, the Labour Party too split over Europe in the late 1970s/ early 1980s. Some have suggested that this split resulted in Labour being out of office between 1979 – 1997. What, perhaps, marks the difference between these two parties is that the Conservative split took place whilst it was in office and continues to the present.

Thirdly, the rise of anti EU sentiments can be understood by the social and economic experiences of many people in the UK. The advantages of membership (free trade, movement of labour and social policies) were not recognised or fully appreciated. The core message of the Brexit lobby of loss of sovereignty and their message which accentuated difference and race were designed to distort the values of membership. This anti EU feeling is not restricted to the UK. The impact of the Global Financial Crash on the economies of EU members led to austerity measures being imposed on member states (especially Greece. Resistance to these and, also, to some of the new liberal reforms were opposed across the EU.

Finally what the Brexit campaigners were able to achieve significantly was not the victory in the referendum but the referendum itself. Winning that struggle within the Conservative Party demonstrated that a vote to leave should have been seen as likely not a surprise. Brexit caught a sense of grievance and worked on that. Like many populist campaigns it ‘spoke in a language which ordinary people related to ‘and they voted. The anti Brexit campaigners had failed (over a long time) to make the case for membership. For this reason and for no other winning a vote to rejoin will take a long time as well as needed EU support.

Point six: The Northern Ireland protocol

The point we are now at illustrates the analysis offered above. On one side of our understanding is that the Peace Process in the late 1990s was about securing a solution which sat within the EU. One way of ‘normalising ‘difficult situations is to make the day to day ordinary (free movement of goods and services and labour does that including living in one state but working in another). From ordinary it may be possible to work at lessening tensions and violence. On the other side Brexit was all about resurrecting borders and with them controls. So whilst the UK government said it wanted to minimise border controls this was not accepting the outcome of the vote to leave. It might be that some political leaders campaigning for Brexit were naïve but what is not in question is that they failed to take account of the practical / political implications of leaving. Finally there is an irony too that England voted to leave but Northern Ireland and Scotland voted to stay.

Summary and implications

It will take some time (possibly 20 – 30 years) before the UK is ready to vote to rejoin the EU. In the meantime three possible developments are:

- Scotland votes for independence
- Ireland votes for a united country
- EU loses more members