

Breaking up is hard to do? Devolution and the sovereignty dilemma of post-Brexit UK

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Abstract

Brexit was ostensibly about the assertion of sovereignty of the UK parliament in taking back control from the EU. The UK government believed it could reimpose the traditional sovereignty view practised prior to joining the then European Economic Community. However, changes since then mean that within the UKs ambiguous constitutional order account must be taken of the 1998 devolution of certain powers to Scotland, Wales, and Northern Ireland.

This article addresses this sovereignty dilemma in post-Brexit UK against a background of both EU withdrawal and regional differentiation. The UK government's post-Brexit push for centralisation has raised the stakes as regions seek to accommodate the centripetal force of their intra-UK economic relations with the centrifugal force of their culture and identity. It is argued that path dependence formed from the shared experience of the evolving institution of devolution promotes that accommodation thereby offering a path to a viable and unified UK.

Keywords: Brexit, devolution, path dependence, regional differentiation, sovereignty

Introduction

Brexit as both a process and an outcome, in a domestic sense, had largely been focused upon the battle between the United Kingdom (UK) government and the parliament at Westminster. Certainly, this was the forum of greatest heat and light in the contest between Brexiters and Remainers around Brexit's impact on the UK's constitutional settlement. However, as this article discusses, Brexit's role as a critical juncture in UK-European Union (EU) relations impacted not only UK parliament-executive relations but it also unleashed forces affecting the territorial integrity of the UK as a unified entity.

The UK's accession to the then European Economic Community (EEC) in 1973 and particularly subsequent UK judicial recognition of the supremacy of European law had served to blunt the traditional claims to parliamentary sovereignty in the UK. The EU that later emerged developed the concept of subsidiarity prioritising domestic legislatures' rule implementation and deepened the integration of member states around the pooling or sharing of their sovereignty. This shared sovereignty approach provided a guide for the UK Labour government of 1998 in devolving a range of powers to regional institutions while preserving the overall sovereignty of the UK parliament (Douglas-Scott, 2015; Bogdanor, 2019). The process of devolution in the UK, while cynically introduced to seek to head off Scottish calls for independence, draws on a long history of regional identity and established legislative and executive institutions in Scotland, Wales, and Northern Ireland. Over time, devolved institutions became a permanent part of the UK's constitutional arrangements (Wincott et al., 2021, p. 9)

and in being provided with further competences, consent was required for any changes to their devolution settlements.

The institutionalisation of devolution over 20 years has not, however, provided immunity from Brexit's disruptive influence while inbuilt structural inadequacies have worked against the creation of shared or binding narratives around the meaning of Brexit (Murphy & Evershed, 2021, p. 5). The UK government's desire to take back control from the EU and to assert sovereignty, even if more about executive than parliamentary sovereignty, did not distinguish between UK and regional sovereignty. It soon became apparent that the UK government was paying little more than lip service to sovereignty at the subnational level.¹ As well as stoking the fires of Scottish independence, the departure from the EU and the UK government's overall post-Brexit approach have contributed, albeit in different ways, to fears in Wales and Northern Ireland that devolution is being undermined.

This article examines devolution in post-Brexit UK, the divergent approaches across the regions, and the sovereignty dilemmas faced both by the UK and regional governments as they contend with both centrifugal and centripetal forces. It is argued that despite the current UK government's centralising tendencies, the institutionalisation of devolution since 1999 has formed a path dependence for governments as they face bounded or limited choices and with potential costs for any deviation. Path dependence means that once a political entity takes a particular path the costs of reversal are very high and certain institutional arrangements obstruct an easy reversal (Levi, 1997). The "interactive processes among individuals and the design of the institutions in which they interact raise the costs of changing norms, behaviours and relationships" (Levi, 2008, p. 120) and the making of other choices taking you on a different path are made that much more difficult. Accepting a serious place for devolution within any post-Brexit constitutional settlement promotes both the balancing of these conflicting forces and potentially a mechanism by which to keep the UK united.

Devolution and the sovereignty dilemma

Sovereignty is a contested concept though broadly understood to mean both internal authority and independence from the authority of outside influences. Krasner articulates four dimensions of sovereignty being domestic sovereignty which refers to the organisation of authority within a state; interdependence sovereignty referring to the ability of public authorities to control transborder movements; international legal sovereignty referring to the mutual recognition of states and other entities; and Westphalian sovereignty referring to the exclusion of external actors from domestic authority configurations (Krasner, 1999, p. 16). The state model of sovereignty adopted after the Treaty of Westphalia is a strongly held norm internationally though also a construct vulnerable to undermining, not least because it fails to describe how authority is exercised (Werner & de Wilde, 2001). This undermining can be partly explained through the gradual decentring of the state within the global matrix of legal

¹ David Frost, the former chief Brexit negotiator, considered Brexit an exercise in national sovereignty with sovereignty having real meaning in that what it enables us to do is to set our rules for our own benefit (Frost, 2020).

and political authority (Walker, 2013, p. 19) while sub-state nationalists use the concept in other than the Westphalian sense for their own ends.

Brexit was all about the UK regaining control of its borders and retaining economic resources with the UK's idea of political sovereignty having always sat uncomfortably with the EU's legal sovereignty. UK governments had periodically sought to paper over the EU's practice of pooled or shared sovereignty while capitalising on populist Euroscepticism. The Diceyan view of parliamentary sovereignty² has remained dominant across the UK political divide and became coloured by populism,³ especially during the 2016 Referendum and through to the present time. Despite Brexit being heralded, from campaign through to outcome, as a victory for UK national sovereignty through a supreme UK parliament, it both masked and compounded ongoing challenges to parliamentary sovereignty.

The first challenge was the UK parliament binding itself to the 2016 referendum result despite it being only advisory. The second challenge exposed during, and more emphatically after, Brexit was the executive's efforts to resist parliamentary oversight while conducting EU negotiations (Baldini et al., 2020). The third challenge, the focus of this article, is the territorial distribution of powers despite Westminster's neglect of the regions' devolved institutions during the Brexit process (Baroncelli & Rosini, 2020). A fourth challenge to parliamentary sovereignty, and sovereignty generally, comes from the need for the UK to transact its business within a globalised world. The negotiation of international agreements, including post-Brexit free trade deals, involve compromises and the recognition of, and compliance with, global rules and norms.

The establishment of the devolution institutions and the progressive enhancement of their powers arguably already made the UK a post-sovereign polity (Keating, 2001; MacCormick, 1999) though, as recent Supreme Court decisions revealed,⁴ this is clearer in political than legal terms. The devolution settlements followed referendums and were given statutory form by the UK parliament.⁵ Each devolution Act referenced the UK parliaments continuing legislative power and its potential to override the regional parliament (Hunt, 2018) though each different regional form raised questions around the manner and form of restrictions on that parliament's sovereignty (Ewing, 2017, p. 721). Despite the statutory form of each devolution settlement, successive UK governments have undermined their status by continuing to claim that powers were only lent to the regions, just as they had been to the EU (Keating, 2021b, p.1). Such claims remain distractions and sovereignty should be understood not just in terms of its legal, functional, and institutional elements but as a *relationship* that must always be negotiated with other sovereignty-holders (Keating, 2012, p. 12). Sovereignty in the UK should thus be seen as a relational concept between institutions enabling an appreciation of the changing assumptions about the source and location of political authority amidst a growing disaggregation of the cultural-political notion of the British people (Loughlin & Tierney, 2018, pp. 1006, 1009; Young, 2013, p. 72).

² Dicey is recognised as the father of the doctrine of parliamentary sovereignty: Dicey, 1915.

³ National populist sentiment was dominant in the Conservative party while civic rather than economic sovereignism was the strongest influence within the Labour party (Baldini et al., 2020).

⁴ *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5 and *The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill – A Reference from the Attorney-General and the Advocate-General for Scotland* [2018] UKSC 64.

⁵ The *Scotland Act 1998* (UK), the *Wales Act 1998* (UK) and the *Northern Ireland Act 1998* (UK).

The UK Supreme Court tested whether and how devolution had changed the nature of sovereignty during the Brexit process. In its 2017 Miller case,⁶ possibly exercising judicial self-restraint (McHarg, 2018, p. 173), the court took a centralising interpretation of the devolution settlement. It saw the Sewel convention, where a devolved legislature's consent was required before the UK parliament could legislate in areas of devolved competence, as a political rather than a legal convention.⁷ This decision removed uncertainty about the status of this convention (Keating, forthcoming, 2022; Douglas-Scott, 2019) and contributed to the convention being considered a self-denying ordinance and sidelined in the Brexit process (Bogdanor, 2019, p. 255). The *European Union Withdrawal Act 2018* (UK) (EUWA) had recognised that with EU law already incorporated into devolved legislation, statutory amendments were required to facilitate the return of these powers with some returning to the devolved level. However, by early 2018 the UK government was already withholding powers over many areas originally within devolved areas of competence (Baroncelli & Rosini, 2020).

Brexit and the threat to devolution

Brexit required that both the UK and the devolved governments needed to come to terms with how to manage the powers repatriated from the EU. Where the EU had previously provided consistency across the UK,⁸ Brexit now meant that the four governments would need to work together. Disagreements have, not surprisingly, arisen as to which areas should be covered by UK-wide frameworks and how they should operate. The regions have continued to see the issue of consent for any changes as being important (Greer, 2019) though the passage of the EUWA of 2018 without the Scottish parliament's consent⁹ was an early sign of changes in the post-Brexit relationship between the parties. The UK government's position on the repatriation of EU powers was perhaps clearly foretold in an early Brexit White Paper that stated, we have an opportunity to determine the level best placed to make new laws and policies on these issues.¹⁰

Apart from a reference in the *Northern Ireland Act 1999* (UK), there was no equivalent single or internal market provision in devolution legislation to replace what the EU had provided and to address the possibility of diverging regulations once the UK left the EU. The UK government has sought to avoid regulatory divergence through its *Internal Market Act 2020* (UK) (IMA) and gave its ministers extensive powers to enforce the two principles of mutual recognition and non-discrimination across the four jurisdictions so as to align with what had existed prior to Brexit.¹¹ Despite the exemption of existing differences and social and health matters and a weak and non-binding consent mechanism, the IMA effectively undermines the regulatory

⁶ *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

⁷ This status declaration was despite the Sewel convention being embedded in primary legislation (section 28 of the *Scotland Act 1998* (UK) (Ewing, 2017).

⁸ Devolved legislatures were given broad regulatory competences within the EU framework while being bound by EU law and with human rights guaranteed by the EU.

⁹ Both the Scottish and the Welsh governments considered this Act a breach of the Sewel Convention while no devolved government consented to the passage of the final *European Union (Withdrawal Agreement) Act 2019* (UK).

¹⁰ HM Government, 2017, para 3.5.

¹¹ Under Section 1(2) of the *Internal Market Act 2020* (UK) these principles operated to prevent a devolved institution from using product safety or environmental standards to restrict the sale of goods produced in other parts of the UK.

competences of the devolved governments¹² (Keating, 2021b). The loose arrangements of the EUWA of 2018 were thus turned into harder edged centralised control (Wincott et al., 2021, p. 13) and while the UK Supreme Court declared that repatriated EU powers relating to regional competences should return to the regions,¹³ the UK government saw such powers coming back to the UK parliament in the first instance (Hunt, 2018). To this can be added the failure of the IMA to include provisions for subsidiarity and proportionality as previously found under the EU Internal Market, something highlighted by Scottish Deputy First Minister Swinney as undermining of relations (Institute for Government, 2021b).

Pre-Brexit devolution provided for an intergovernmental process under a Joint Ministerial Committee (JMC). Concerns that this was neither a decision-making body nor provided proper processes to account for the interests of devolved governments on EU matters have now been amplified by concerns over the post-Brexit common frameworks (Greer, 2019).¹⁴ This consultative mechanism, described as not fit for purpose by a UK parliamentary committee (House of Commons 2018, p. 5; Wincott et al., 2021), has recently been replaced by a three-tier system of intergovernmental forums.¹⁵ Headed by a Prime Minister and Heads of Devolved Governments Council and with a common secretariat it has, importantly, left the UK Treasury controlling all financial deliberations.

Institutional and differential devolution

UK governments have never seriously considered the possibility of moving towards a federation though historically a certain degree of divergence had been allowed for non-English parts of the UK, particularly around education and health care. With this came the assumption the UK government would have untrammelled charge of the high politics of foreign affairs, defence, and the economy (Bogdanor, 2019, p. 172). With differences in the nature and degree of intensity of feelings about identity across the UK, devolution arrangements and relationships across the regions have differentially impacted the UK's territorial constitution.¹⁶ The legislated devolution of the late 1990s was the product of a cynical push to head off moves for Scottish independence, a recognition of the differing identities across the UK and that many policy areas were being effectively administered at a local level.¹⁷

Scotland

Scotland represents the highest point of devolution in terms of the powers available to a regional parliament and it has sought and been granted extended powers over the past decade.¹⁸ There is no doubt that Brexit has strengthened and changed the Scottish case for independence with the May 2021 Scottish election further increasing the

¹² An example of such undermining would be through goods and services originating in, or imported into, England being able to be marketed elsewhere through the UK.

¹³ *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

¹⁴ JMC discussions over agriculture and state aid proved particularly difficult between the UK and devolved governments.

¹⁵ HM Cabinet Office and Department for Levelling Up, Housing and Communities, 2022.

¹⁶ Bogdanor refers to four differing interpretations of the UK constitution as referenced by each region's engagement with Westminster (Bogdanor, 2019, pp. 239-245).

¹⁷ Importantly, the Labour party was in power in Westminster and dominant in Scotland and Wales at this time.

¹⁸ Additional powers were transferred to the Scottish Parliament in 2012 and 2016, including over taxation and social security.

Scottish National Party's (SNP) grip on power. The Scottish government does not want to reform the UK state but rather to leave it while seeking a devo-max situation or maximum of devolved powers on its way to home rule. The high level of policy autonomy that characterises Scottish devolution represents the culmination of efforts by successive governments to innovate and make laws that suit their regional circumstances while resisting interference from Westminster. With the UK government insisting that the whole of the UK should leave the EU together and ignoring Scotland's different vote, the Scotland parliament introduced its *European Union (Legal Continuity) (Scotland) Bill* in 2018 enabling the Scottish government to maintain dynamic alignment with EU regulations. The Bill was successfully challenged by the UK government with the Supreme Court giving EUWA 2018 precedence over the Scottish Bill,¹⁹ again revealing the courts support for UK parliamentary sovereignty.

Wales

Wales was initially hesitant in moving towards devolution but has since fully embraced it.²⁰ With little pressure for Welsh independence, it is the only UK region with any interest in a constitutional resettlement along the lines of a federal or quasi-federal structure (Hunt, 2018, p. 52; Bogdanor, 2019, p. 209). The Welsh governments response to Brexit was not dissimilar to that of the Scottish government though the ruling Labour party has been more accommodating to Westminster, partly reflecting the regions much weaker economic position.

The Welsh government has recently referred to the Johnson government's approach to devolution as aggressive unilateralism and called for reform that accounts for the reality of devolution rather than a retreat into the past (Institute for Government, 2021a). Its recent reform proposal, *Reforming our Union*, identified the current division of devolved and reserved powers as being unstable with an asymmetric patchwork of settlements and leading to an inappropriately lengthy set of matters reserved to Westminster (Welsh Government, 2021, p. 27). It called for a reform of the union that would recognise the dispersal of sovereignty and begin with the assumption that devolved responsibilities be codified (Welsh Government, 2021, pp. 8, 28). Devolution in Wales, while not as forcefully prosecuted as in Scotland, has increasingly been seen as the path to pursue to both address its cultural differentiation and particular economic concerns. The Welsh government has recently become more determined to resist Westminster's attempts at policy override and seeks a return to the, albeit limited, level of policy autonomy from and consultation with Westminster of the pre-Brexit period.

Northern Ireland

Devolution in Northern Ireland is a special case with the main fault line being a community one and with the principal political division in the province [being] about whether it should remain British, that is, part of the United Kingdom (Rose, 1982, p. 76). Against the history of the province's Troubles, the peace process, the devolution

¹⁹ The Supreme Court found that, while the Scottish Act was constitutional when introduced, the *EU Withdrawal Act 2018* (UK) subsequently rendered parts of it unconstitutional (*The UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill – A Reference from the Attorney-General and the Advocate-General for Scotland* [2018] UKSC 64).

²⁰ The Welsh Assembly gained partial powers to pass primary legislation in 2007 with full legislative powers following in 2011. This was followed by the *Wales Acts* of 2014 and 2017 that extended its range of policy control.

settlement, and the 1998 Good Friday (Belfast) Agreement (GFA) owed much to the broader European background and the new perceptions of sovereignty that EU membership has facilitated (Meehan, 2000). The GFA was, importantly, structured around relationships (Harvey, 2018, p. 11) and it was this power sharing between former political adversaries that made devolution in Northern Ireland possible, itself an innovative constitutional development (Wincott et al., 2021, p. 9). While critical to the maintenance of peace in the province, devolved (power-sharing) government has been intermittent with periodic suspensions of the local Assembly resulting from policy disagreements between the Protestant Unionists and the Catholic Nationalists.

Brexit has profoundly impacted both the Irish border between Northern Ireland and the Irish Republic and the province's devolution process. Post-Brexit Northern Ireland constitutes a case of differentiated integration with the final withdrawal deal, articulated in the *Northern Ireland Protocol* (NIP), providing for Northern Ireland to remain in the EU's regulatory zone for most purposes and in both the EU and UK customs zones. The NIP provides a consent mechanism enabling the devolved parliament to decide whether to remain in the EU after four years though this has been criticised within Northern Ireland as possibly leading to the collapse of the province's devolved administration.²¹ The NIP resulted in the border between the EU and the UK being in the Irish Sea rather than the more contentious land border between Northern Ireland and the Irish Republic. Despite his earlier criticism of the May government's backstop calling for Northern Ireland regulatory alignment with the EU, Prime Minister Johnson's NIP has, in effect, eliminated the backstop by making it permanent (Keating, forthcoming, 2022).

The Northern Ireland's post-Brexit situation has revealed a number of borders: the jurisdictional border guaranteed by the GFA; the security border following the removal of security checks and patrols; the economic border; and an imaginary one between the unionists and the nationalists (Keating, forthcoming, 2022). Relations between the EU and the UK around the economic border have become tense with both parties having acted against the law and spirit of the NIP.²² As to the imaginary border between unionists and nationalists, this border was aggravated by Brexit given its impact on both the movement of people and goods, thereby providing a further stress test for the GFA (Bogdanor, 2019, p. 229). Northern Ireland's complex political and border arrangements differentiate it from other regions. The post-Brexit environment has required the further institutionalisation of a particular devolutionary path that recognises the importance of a level of local consultation and decision-making while seeking to secure peace across the region's communities.

Supply delays together with regulatory barriers imposed by the EU in Northern Ireland saw sectarian violence flare up in 2021 and the UK government push for a renegotiation of the NIP and pragmatic alternatives to the functioning of a regulatory and customs border.²³ This approach is arguably about having your cake and eating it by securing sovereignty by being outside the EU customs union without the downsides of mandatory border checks and controls (Hayward 2021). The UK government has since sought to develop a more purist form of sovereignty by seeking the removal of

²¹ Jeffrey Donaldson, the leader of the Democratic Unionist Party in Northern Ireland (NI), has argued that the consent principle has been reduced to being the final transfer of sovereignty and with no protection against the creeping erosion of NI's status as part of the UK (Donaldson, 2021)

²² The EU with the delivery of COVID-19 vaccines and the UK on delays introducing controls between the rest of the UK and Northern Ireland.

²³ HM Government, 2021.

the jurisdiction of the European Court of Justice (CJEU) over the NIP (Rycroft, 2021b). A continuing UK threat to invoke the NIPs Article 16²⁴ has taken UK-EU post-Brexit relations to the brink and, while negotiations are ongoing, little account has been taken of the interests of the devolved institutions of Northern Ireland.

England

England as the dominant, though constitutionally unrecognised, player within the framework of the UK's nations enables the Johnson government to see the UK as a unitary state with devolution tacked on (Keating, 2021a, p. 197). England's 85% of the UK population made the vote to leave the EU possible. Brexit has thus often been seen as a response to a perceived threat to English national identity resulting in both a strengthening of a sense of Englishness and increasing resentment towards the non-English regions (Bogdanor, 2019). England was largely ignored and uninterested in the devolution process and Brexit has, if anything, resulted in even less interest within England. The Cameron conservative government introduced a short-lived form of devolution-lite with the English Votes for English Laws (EVEL) procedure in 2015²⁵ where only English MPs could vote on matters relating just to England. Directly elected mayors in major cities and some regions²⁶ is the only lasting forms of devolution in England with calls remaining for further reform of local government (Bogdanor, 2019; Sandford, 2020).

The discontent that the Cameron government sought to address persists but is somewhat inchoate as revealed in a 2017 Cornwall²⁷ survey where people said they wanted a strong Britain more than local control despite local concerns being dominant (Willets, 2021). While Brexit will have addressed concerns about EU control over their affairs, as also revealed in the Cornwall survey, concerns remain about a Westminster-centric UK parliament ignoring parts of England. However, this does not mean there is a strong and coherent push for devolution or an obvious territorial solution (Keating, 2021a, p. 198). Devolution within England is patchy at best and relatively weak compared to that in other regions. Where devolution is found to exist in England it is relatively recent, limited to a few cities and counties and, in contrast to the other regions, presents little evidence of a path dependency towards its further institutionalisation.

Can the Union hold?

It is too early in the post-Brexit period to accurately assess whether the UK will break up or at least lose one of its regions, but important forces can be identified that could either pull the union apart or draw the constituent regions together. While significant political and social actors are relevant, institutional influences are likely to prove more determinative.

²⁴ Article 16 is the Protocols safeguard mechanism enabling either the UK or the EU to take unilateral measures if applying the protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to a diversion of trade.

²⁵ From 2015 to 2020, 35 bills were considered under the EVEL process but this procedure failed to be of practical significance (Cheung et al., 2019). It was abolished in 2021.

²⁶ There has been no substantial shift in power away from Westminster but these devolution deals may well mean elected mayors can act as wedges to push for more local control (Ayres et al., 2018).

²⁷ Cornwall was chosen due to its traditionally strong support for political decentralisation and a long running campaign for a devolved Assembly.

Forces pulling the UK apart

The UK governments approach to funding may well be moving from what was colloquially referred to as devolve and forget before Brexit to devolve and compete with the direct funding of regions in policy areas of regional competence, but without devolved government agreement. This approach contradicts both the spirit and the law of the devolution settlements and is opposed by all devolved governments. Despite the UK government's rhetorical support for devolution, exemplified by Minister Gove's letter of acceptance of the Dunlop review,²⁸ the use of the term unitary state,²⁹ the reality of the *Internal Market Act's* common frameworks³⁰ and the use of direct funding tell a different story.

Other forces provoking a possible break-up of the union are the SNP's push for devo-max while maintaining its campaign for another independence referendum. Some in the Labour party are pushing for radical federalism which, while still an inchoate concept, seeks a middle point between a unitary state and independence. However, the highly asymmetrical population split in the UK works against a viable federal structure (Bogdanor, 2019) and federalism fails to resolve outstanding questions around sovereignty and democratic accountability any more than devolution (Keating, 2021a, p. 200).

In Northern Ireland the increasingly powerful and nationalistic Sinn Fein political party still promotes reunification with the Republic of Ireland. However, while it has only just emerged as the largest political actor, it is not dominant and the NIP and the lack of a land border with the Republic have undermined broader support for reunification. In the Republic, the fact that it will need to both economically subsidise the province post-reunification and adapt institutions to accommodate the province's Protestants/Unionists have also diminished support for reunification (Keating, forthcoming, 2022).

Forces keeping the UK together

The Welsh government is the only devolved government seeking post-Brexit reform of devolution along quasi-federal lines. The Welsh nationalist movement for secession, Plaid Cymru, is weak and the ruling Labour party, despite concerns over the UK government's undermining of devolution through direct funding, seeks the maintenance of the UK (Institute for Government, 2021a).

A more important force for maintaining the union is the nature of the economic interdependence between the regions. As well as a common currency (which the Scottish National Party may well retain in a post-independent Scotland) the history of trade flows across the internal borders presents an important indicator of the value of the union. England is the least reliant on intra-UK trade of any region,³¹ and has run the smallest deficit while Wales and Northern Ireland remain the weakest and most

²⁸ This was the UK government's *Review of UK Government Union Capability* of March 2021 calling for an intergovernmental council for cooperation and joint working across the regions (Gove, 2021; HM Government, 2019).

²⁹ The UK government used this term in its 2020 Internal Market White Paper (BEIS, 2020, para 16).

³⁰ In policy areas where the UK government seeks UK-wide frameworks, it retains the power to impose new frameworks without devolved government consent should agreement not be reached.

³¹ Scotland, Wales and Northern Ireland each trade more with the rest of the UK than with all other countries in the world combined despite Northern Ireland also having close trading links with the Irish Republic.

financially vulnerable regions.³² With declining North Sea oil and gas revenues an independent Scotland would need to make major fiscal adjustments and this may not be alleviated by being within the EU.³³ With the current redistribution of resources within the UK strongly favouring regions other than England, breaking away would mean a loss of current transfer payments from Westminster, additional foreign relations and defence costs and higher borrowing costs as a smaller nation (Telow & Cheung, 2021, p. 40).

Concluding comments

It is obvious that the experience of devolution has not resolved the dilemmas around what is sovereignty and how it is exercised in the UK. The constitutional principle of parliamentary sovereignty remains as strong as ever and available to be exploited by a willing UK government such as the current one. Devolution can either be characterised as a step along the way to regional independence or as a device by which the union can be secured. First and foremost, it should be identified for what it is: an institution which has enabled a degree of policy autonomy at a more local level and the legal and political representation of differences in culture and identity. While the call for some regional financial and policy autonomy is not a recent phenomenon, its legal and political existence over the past 23 years has meant that devolution is now a part of the UK's constitutional settlement.

The current UK government considers that it only lent the powers to the devolved institutions and, to date, has only provided limited processes for collaboration between the central and devolved administrations. However, this view fails to recognise that over more than 20 years devolution has been established as a legal and political reality reflecting back over a long history of particular cultures and identities. This further institutionalisation since the late 1990s has formed a path dependence through a shared experience of a degree of policy autonomy, consultation, and the expectation of local innovation.

While Brexit has created opportunities for the UK government to attempt to reset the nature of devolution, the choices available to it are bounded by the historical institutional reality of the UK's dispersed or shared sovereignty. Further attempts to undermine this accepted part of the UK's constitutional arrangements should be approached with care lest they inflict political costs upon any future Westminster government. Equally, attempts by devolved governments to move any further in the direction of independence must be tempered by the vulnerability of their economic interdependence within the UK. Rather than devolution serving to hasten the breakup of the union, the institutionalisation of the pre-Brexit experience of shared governance and relationships might just present the path that enables the regions of the UK to accommodate their separate cultures and identities with the economic virtue of remaining within the UK.

³² Where England ran a deficit of 0.3 percent in 2019, Scotland's was 7.7 percent, Wales 17.9 percent and Northern Ireland 19 percent and where England spent £91 per person, Scotland spent £2543, Wales £4412 and Northern Ireland £5118 (Telow & Cheung, 2021, p. 38).

³³ An independent Scotland within the EU could see an income per capita drop between 6.3 percent and 7.6 percent (Huang et al., 2021, p. 16).

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