THE EU AND THE UK - THE LIBERAL CASE FOR TERRITORIAL DIFFERENTIATION

The General Election of 2017 had four different outcomes in each of the four constituent parts of the United Kingdom. In Wales, the Labour Party gained a majority of seats in the House of Commons. In Scotland, the SNP gained a majority. In Northern Ireland, the DUP gained a majority. And in England, the Conservative Party gained a majority. To that extent, the political homogeneity of the Union was fractured as never before.

Those (including Liberals) who argue for the maintenance of the UK Union are coming to realise that its best chance of survival will be as a sisterhood of equal but different countries, rather than as a monolithic whole. As the greatest of radical Liberal statesmen, Sir Henry Campbell-Bannerman, wrote as long ago as 1889, "Scottish Home Rule involves English Home Rule, and … not one in a thousand Englishmen has ever grasped the idea of having a local (English) parliament, as apart from the common Imperial Parliament". England's electoral choices having diverged so much from those of the other countries in the UK, the time may now be right to grasp that idea firmly.

Similarly, the EU referendum of 2016 led to uneven outcomes. In Scotland, Northern Ireland (and Gibraltar) the popular vote was to remain part of the EU. In Wales and England, a majority voted to leave. If we are to respect the popular vote, as is so often urged on us, and much though we deplore the result, then it makes sense to examine whether there is a way for England and Wales to leave the EU, while providing a mechanism for Northern Ireland, Scotland, and Gibraltar to remain in membership, or at least for each to remain in the customs union or single market.

Government and media attention has so far focused largely on the question of whether reinstating a hard border on the island of Ireland can be avoided in the event of a UK exit from the EU. This has led to speculation about whether Northern Ireland (alone) can have a relationship with the EU which is differentiated in various ways from other parts of the UK. Less attention has been paid to the question of how such differentiation would affect Scotland and perhaps Wales.

There are compelling reasons for avoiding the reintroduction of a hard border between Northern Ireland and the Republic. Removal of the hard border normalised cross-border co-operation and depoliticised the area. Customs posts were removed and citizens on both sides gained the right to cross-border work. The Belfast (Good Friday) Agreement, achieved after patient and painstaking work over years by diplomats and politicians from the UK and elsewhere, has brought a fragile peace that is greatly to be welcomed. It is dispiriting to see politicians of the right belittling these achievements simply to minimize an obstacle to their repellent dogma, and to hear airy government assurances – based on no reliable evidence – that a hard border can in some mysterious way be avoided in the event of the UK leaving the customs union

Re-imposition of the border would surrender the hard-won gains of the past twenty years. It would probably lead to a further shrinking of the Northern Ireland economy. It would incentivise smuggling and it would lead to loss of ECJ access for citizens in the north-east but not in the rest of Ireland. There are clearly overwhelming arguments in favour of a constitutional solution that respects the views of the devolved administration (if and when it resumes office) and avoids the need for a hard border.

However, this solution for Northern Ireland - much to be desired - has troublesome implications for Scotland. Most commercial traffic between Great Britain and Northern Ireland travels (along the woefully inadequate A75) to the ports of Stranraer and Cairnryan in SW Scotland and thence by ferry to the Belfast area. This is the route by which UK retail chains supply their branches in Northern Ireland. This is the route by which dairy produce from Northern Ireland enters the rest of

the UK. This route is vital to the economy of Northern Ireland, and is how many of its exports make their way to the rest of the world. If Northern Ireland (but not the rest of the UK) develops a differentiated relationship with the EU in the interests of avoiding a hard border with the Republic, then there will have to be customs posts and a hard border between Northern Ireland and Scotland.

The problem doesn't go away. It is simply moved from Strabane to Stranraer.

South-west Scotland, as the main point of entry for goods from Northern Ireland into Great Britain, will find itself unwillingly equipped with all the paraphernalia associated with old-fashioned border crossings if the UK leaves the EU but there is no hard border in Ireland. As the point at which the movement of goods, people, and services cease to be subject to EU rules, an elaborate system of immigration checks and customs controls would have to be put in place. But there is another way.

Negotiations with the EU on a UK exit have so far concentrated on ways of mirroring some aspects of EU membership in Northern Ireland in the interests of maintaining the terms of the Belfast Agreement. That is entirely justifiable, as a majority of Northern Ireland voters chose to remain in the UK. An even larger majority of Scottish electors also chose to remain in the EU. It would therefore make good democratic sense to explore ways in which Scotland could retain free trade links with Ireland and the EU by means of a differentiated agreement such as has been proposed (in effect) for Northern Ireland. There is a strong case for investigating the feasibility of Scotland and Northern Ireland both remaining in the single market and perhaps remaining as full members of the EU. That is, after all, what they voted for.

We should be clear that such an outcome would mean border controls between England and Scotland - border controls are inevitable if one part of Britain and Ireland is a full member of the EU and another part is not. The most logical place to have such controls will be between those parts of the UK which voted to remain in the EU, and those which voted to leave. Border controls are nasty; they slow commerce and they divide people unnecessarily, but they are an inevitable consequence of implementing the 2016 vote, wherever they are established.

Such an outcome would have benefits and disadvantages for Scotland. Among the countries that make up the UK, Scotland would suffer disproportionately from loss of the EU market. A result which enabled Scotland to remain in the EU (virtually or actually) would support Scottish exports to the EU. Its whisky, oil, fish, agricultural and engineering products would continue to have ready access to large markets. A new emphasis on trade with Europe might kick-start a sluggish Scottish Government into making necessary but long-awaited infrastructure improvements. Among these would certainly be a resumption of the ferry link between Rosyth and Zeebrugge.

If that relatively straightforward improvement were made, then there would be a strong case for reviving the proposal developed some 15 years ago to designate the roads across Scotland from Rosyth to Stranraer as part of a TENS route. That would enable long-overdue highway improvements (possibly with European funding support) to provide a trans-European route from Rotterdam by ferry, road and ferry, into both jurisdictions in Ireland. Such a route would enable goods to flow between Northern Ireland, Scotland, and the EU on a barrier-free basis and without crossing England or Wales, should those countries have left the customs union or single market.

The Scottish Government (unlike its Westminster counterpart) welcomes immigration. It is keen to increase its population and labour force. Scotland has one of the lowest population densities in Western Europe, and so freedom of movement tends to be viewed more positively north of the border than in England. It would not necessarily be impossible - legislative powers allowing - for Scotland to have immigration policies that differed from those of the UK. A template for this can be found in Quebec, which has different immigration policies from the rest of Canada.

Set against these benefits would be greater difficulty in trade between Scotland on one hand, and England and Wales on the other. Statistics often quoted suggest that transactions with England are the greatest volume of Scottish exports, but these figures can be misleading. The figures count only the first, rather than the final destination so (for instance) whisky destined for Germany is counted as an export to England if it passes through a warehouse in London *en route*. Nonetheless all barriers to free trade end up causing difficulties to those on either side of the barrier.

The border between England and Scotland may be less problematic to police than that between Northern Ireland and the Republic, being much shorter and having fewer crossing points, but customs posts anywhere are anathema to Liberals; all that can be said is that they are a necessary consequence of UK exit, and the most logical place for them is between countries that voted to leave, and those that voted to remain.

Accepting that, Liberals will naturally wish to minimise the effect of transition between parts of the UK remaining in the single market or customs union, and those that leave, should that be the case. There are some interesting examples around the world of how this might be done, though most involve tiny jurisdictions rather than substantial ones, so read-across may be limited. It is possible, for instance, to make a journey from Austria through Liechtenstein to Switzerland covering less than 50km yet passing through three separate countries - one in the EU, one in the EEA and one in EFTA. Very little in the way of border controls is noticeable during the journey despite these being separate economic regimes (though crucially each respects EU standards to a greater or lesser extent).

Another example can be found in the Faroe Islands. Here, in a fully devolved system of government, every citizen is free to apply for either a Danish (EU) or for a Faroese (non-EU) passport. Citizens of Northern Ireland, of course, already have the right to an Irish passport as well as to a UK passport. Perhaps there is some potential for extending Scottish devolution to allow a similar scheme if a differentiated UK exit from the EU occurs, and to allow residents of Scotland a similar choice.

Other ways of policing the border between adjacent EU and non-EU territories can be seen in the present arrangements between the UK and the Isle of Man and Channel Islands. These, however, all concern very small territories with minimal population sizes. They may be of particular relevance to finding an acceptable solution for Gibraltar's EU status. A larger comparator, which presents greater difficulties, is Cyprus. Here, three different jurisdictions (Cyprus, Northern Cyprus, and the sovereign bases) will each have different relationships with the EU in the event of a UK exit, and it is far from clear what the relationship between them would be in that case. None of these issues is resolved by the latest nebulous proposals from Jeremy Corbyn and the hapless Keir Starmer.

In summary, then, as Michel Barnier has pointed out, customs controls are part of EU border management policies. In the event of a UK exit, there will have to be customs controls of some sort at some border between jurisdictions remaining in the EU/single market/customs union. There is political consensus that these should not be between the Republic of Ireland and Northern Ireland but there has been little discussion of where else they should be instead. A lazy but unspoken assumption has been that they should be placed between Northern Ireland and Scotland. A better resolution of the difficulty will be to site the customs controls between those countries that voted to remain in the EU and those that voted to leave, while seeking to minimise the effect of those controls by drawing on experience elsewhere in the world. Such an outcome would respect the devolution settlement and the popular vote in Northern Ireland and Scotland. It would therefore be a more Liberal outcome than the Conservative/UKIP alternative of absorption into whatever choice is made by English electors, or the SNP offer of independence and perhaps an application for full EU membership, which may or may not be granted.

NOTES ON TERMINOLOGY

Most Liberals will be familiar with the constitutional position but some definitions, while pedantic, may be helpful.

The United Kingdom (UK) is the United Kingdom of Great Britain and Northern Ireland.

Great Britain refers to a smaller territory - only the island of Britain together with most of the small islands adjacent to it. (It is not - as is sometimes thought - a term of self-aggrandisement, but is a translation of the French term Grande Bretagne meaning, loosely, Greater Brittany.)

"Brexit" is an inaccurate and - to some - offensive term. It is short for "British Exit" and so overlooks those who are in the UK but not in Britain. "UK Exit" is a more acceptable way of referring to this deeply unpleasant concept.

It is not universally understood that the Isle of Man and the Channel Islands are Crown Dependencies. They are not part of the UK and they are not members of the EU. They have far wider powers than the much larger devolved jurisdictions of Wales and Scotland, and enjoy their own rules on taxation and immigration.

In this article, Ireland means the island of Ireland and the adjacent small islands. Northern Ireland consists of the six counties which remain part of the United Kingdom. The Republic of Ireland is every other part of Ireland.

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