

Who is in control? Brexit and the Westminster Model

Gianfranco Baldini^a, Edoardo Bressanelli^b & Emanuele Massetti^c

^aUniversity of Bologna, ^bKing's College London & ^cUniversity of Surrey

ABSTRACT

This article provides a preliminary assessment of the impact of the Brexit process – from the June 2016 referendum to June 2018 – 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. Even if emerging trends tend to be fragile, complex, even contradictory, and the current uncertainty makes any long(er)-term assessment futile, recent developments appear to signal a possible strengthening of the executive over the legislature and of the central over the devolved administrations, thus consolidating the majoritarian traits of the British political system.

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

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».¹ 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.

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.² 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? Two years after the 2016 referendum these questions remain as crucial as ever. And yet, a definitive answer cannot be provided.

Here, we argue that the impact of Brexit on British democracy can usefully be assessed – albeit in a preliminary fashion – 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 article seeks to uncover.

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.³

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).⁴ 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.⁵

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”.⁶ 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.⁷

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.⁸

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 article 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. Since we aim to see how Brexit is changing the British political system, we deem appropriate to start from the processual elements which are inherent in the inter-institutional dynamics associated with the second and third dimensions. Hence, we leave the electoral-dimension for last, as this is more related to the 2017 general election as a discrete event.

Brexit and the 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 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 relative urgency of implementing Brexit – given the March 2019 deadline – cast doubts on the capacity of Parliament to effectively be (back) in control.

The unfolding of the Brexit process, particularly at some critical moments, reveals a significant tension between the executive and the legislative powers. As art. 50 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. Against this background, the tension between Government and Parliament came to light as soon as the former embraced the idea that there should be a minimal role of the latter in triggering art. 50.

While the High Court 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,⁹ the formal involvement of Parliament did not translate, so far, in evident influence over 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 at the end the latter was able to put into practice its *ex ante* defined preferences.

Another important institutional battle 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,¹⁰ which were (to a limited extent) addressed after the Government accepted to compromise on a Lords’ amendment.

Yet, the most serious controversy was on the so-called ‘meaningful vote’ on the final Brexit deal. The Government position initially was dubious on the need for a parliamentary vote, but conceded that Parliament would be able to vote on a ‘take it or leave it’ basis. This offer left several MPs disappointed, as Parliament could not amend the Bill, but only accept or reject it – the latter option meaning that the UK could exit the EU without a deal. In December 2017, the Commons passed an amendment with a majority of four – the first parliamentary defeat of the Government on Brexit – 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 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, or in case of no deal. The Government refused to receive a strict mandate from Parliament. Eventually, a compromise was found and, in both circumstances, the Commons would vote on a motion on how Government intends to proceed. Whether the motion is amendable – enhancing Parliament’s powers to give instructions to the Government – is not clear, leaving open the possibility of a further institutional confrontation as the Brexit day approaches.

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. Yet, Parliament has not been a passive spectator. It could count on two important constraints on the power of executive: the need for the minority government to secure the support of all backbenchers – in a context of deep intra-party divisions on integration – and the lack of a conservative majority in the House of Lords.¹¹

Brexit and the territorial question(s)

Brexit provides both an opportunity and a threat for devolved governments. The opportunity stems for the prospect of gaining some of the repatriated powers and, in the process, to assert the

constitutional guarantees of the devolved administrations. The threat is primarily linked to the persisting unitary character of the UK, which has manifested itself in the way Brexit was decided and it is manifesting itself in the way Brexit is managed. Three general tensions and some issues specific to each individual region can be identified. The general tensions are primarily politicized by the Scottish government which, being controlled by a minority nationalist party (SNP), has proved to be the most assertive. However, in some occasions, Edinburgh has been joined/supported by other devolved governments in its political fight.

The first general tension originates from a perceived lack of legitimacy in the decision-making process adopted on Brexit: a UK-wide referendum which did not take in any consideration the preferences of the regions with devolved administrations. Three out of four devolved regions – Greater London, Northern Ireland and Scotland – voted in favour of remain but they were dragged into Brexit against their will by England's vote.¹² Secondly, representatives of all devolved administrations, including Wales (where 'Leave' won), have expressed serious concerns about the possible economic implications of Brexit for their regions. Thirdly, in the absence of well-regulated intergovernmental co-decision making, strong disagreements on the process of Brexit and on the allocation of repatriated competences across the levels of governments (Westminster vs. devolved administrations) are quickly degenerating into constitutional conflicts.

Soon after the Brexit referendum, the Scottish and Welsh government joined the appeal of the legal case *Miller vs. Secretary of State for Exiting the EU* before the Supreme Court, invoking the Sewel Convention and, thus, advocating their right to provide or negate their consent to Westminster legislation for UK's withdrawal from the EU. However, the Supreme Court declared that, although the preservation of harmonious relationships between Westminster and the devolved legislatures 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".¹³ While this decision does 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 constitutional guarantees for the devolved administrations.

More recently, the Scottish Parliament has voted to deny its consent to the EU Withdrawal Bill. Its vote is mainly due to provisions contained in the Bill that would allow the UK Government to withhold powers for up to seven years over twenty-four repatriated policy areas that pertain to devolved competences, without conceding a veto power to the Scottish Parliament. 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 to deny consent. This decision has opened up a new constitutional clash before the Supreme Court, which is expected to rule in July 2018.

Besides these general tensions, two specific issues are worth mentioning, 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 penalizing for Scotland, a resurgence in Scottish independence cannot be ruled out. So far, support for independence has remained 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.

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 likely to reignite identity politics, re-awakening ‘the border of the mind’ between communities.¹⁴ 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.

All in all, the situation appears to be still fluid, with devolved administrations (Scotland *in primis*) determined to keep their ground and with possible secessionist backlashes. In addition, 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.

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.

The ‘Brexit effect’ on this dimension is more problematic to trace than in the previous 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 only build our argument on a single electoral event, i.e. the snap election held in June 2017, called by Theresa May with the specific aim of obtaining a more comfortable majority for the Brexit negotiations. 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”.¹⁵

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.¹⁶ 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 volatility, the last two General elections have displayed more similarities than differences: by far the highest levels of total net volatility (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,¹⁷ 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.

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. In other words, whether we are witnessing a realignment or a temporary return to some of the pre-1974 dynamics is, as yet, unclear.

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 we have adopted a very short timeframe (June 2016 – June 2018), in which emerging trends tend to be fragile, complex, even contradictory, and strongly linked to the previous (much longer) period with which we conduct an indirect comparison. Yet, 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 executive-legislative dimension, we have detected a very assertive, if not aggressive, posture of the Government, ready to bypass Parliament for the triggering of art. 50 and willing to give it a very limited role on the final Brexit Bill. The executive has also tried to expand its powers via delegated legislation and the use of statutory instruments. This is justified in the light of the complexity of Brexit and the need to take swift decisions under tight deadlines. In spite of some resistance by Parliament, including the House of Lords, and the danger of rebellions within the ranks of the majority in the Commons, the Government plan has not been derailed and, while its 'red lines' may have blurred, its position has hardly been critically compromised.

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 a legal battle before the Supreme Court on their power to block Brexit. In addition, 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. The whole Scottish Parliament, with the support of all parties except the Scottish conservatives, is fighting again a constitutional/legal battle, but its chances of success appear to be slim. As for Northern Ireland,

notwithstanding many reassurances by the government, it is still uncertain how the border issue will be dealt with.

Finally, 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. Given the general climate of uncertainty that surrounds the outcome of Brexit, the shape of the party system to come also remains difficult to predict.

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 also is likely to lead to significant adaptation. Given the uncertainties over the Brexit outcome, any long(er) term assessment remains built on sand. Nonetheless, taking stock of the existing evidence, the Brexit process so far appears to be consolidating the Westminster traits of the British political system. As Brexit continues to unfold, the direction of change may, perhaps, become clearer. In all likelihood, however, any systemic assessment will remain provisional for several years to come.

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