Whither democracy?

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One of the most remarkable (and bizarre) elements of the ongoing Brexit process is the extent to which it represents England at (political) war with itself. That this is peculiarly and uniquely an English phenomenon has become obvious even to interested outsiders. Public opinion in Scotland overwhelmingly supports remaining in the EU (far more strongly than many of the rest of the EU-27) and Northern Ireland has its own fascinating political dynamics. There too, a majority wanted to "Remain" and a more substantial majority want to avoid hard borders.

What of Wales? After all, Wales also narrowly voted to leave the EU in 2016. However, Wales is not simply a mini-England. There are very specific dynamics to the Welsh vote – with Gwynedd in particular voting quite distinctively. There is some evidence that Welsh speakers voted to remain inside the EU. These issues notwithstanding, Welsh identity also provides a strong unifying force that has (thus far) taken the edge off some of the divisiveness of the past 3 years (although Wales is definitely not immune to it).

What is less appreciated by many observers is the extent to which it is emphatically *not* the case that England is somehow a "Brexitland" where everybody hates the EU and 90% of the population support a no-deal exit[1]. 53.4% of English voters voted to leave the EU in 2016. As noted in a previous blog post, 2019 is not 2016, and my own assessment is that if the referendum (or a rerun) were to be held now, the result in England (but not the UK) would be the same, Leave would win by a considerably narrower margin than previously.

Where does that leave us (if you'll pardon the pun)? A "disunited Kingdom", in which England engaged in a political "civil war" with itself appears poised to cause the entire edifice to fall out of the EU without any withdrawal agreement in place, against the wishes (and to the enormous consternation) of at least 2 out of the 3 other constituent parts of the country. This is almost unique in recent UK history.

For example, whilst it is certainly the case that Scotland and Wales voted emphatically against Mrs Thatcher's administration, the same was true of much of the North of England[2]. In 1983, Wales returned more Conservative MPs than the North East (plus Cumbria) and Scotland returned almost as many as Yorkshire. In contrast, Scotland's vote differed markedly from every English region bar London in 2016 (which, unlike Scotland, appears to have differed from the rest of England solely due to demographic factors[3]). There is thus now a political distinction between Scotland and England in a way that simply did not exist as recently as the 1980s. Whether this will ultimately rupture the UK remains to be seen, but dissolution of the Union appears to be a likely outcome at this juncture.

Perhaps the single most worrying aspect of the ongoing drama is the damage to the democratic fabric of the country. How you (the reader) interpret that statement is, to a large extent, determined by where you stand on the pro vs anti-Brexit spectrum. Contrary to the sloganeering, there are a large pool of voters who do not have strong opinions. If pushed (as in the referendum itself), they will come down on one side or the other and they do hold an opinion on whether Brexit should go ahead or not but it is hardly the centrepiece of their lives. After all, over a quarter of the UK electorate didn't vote during the 2016 referendum.

Nevertheless, for the very substantial number – perhaps a majority – who *do* care (often passionately) about the subject, strong opinions emerge. For those who are strongly pro-Brexit, the democratic danger lies in remaining in the EU (or leaving with an insufficiently strong break from the EU). The deal negotiated by the government – whereby the UK leaves the EU but remains subject to certain legislation and in a customs union with the EU as a whole until a mutually agreed solution can be found that guarantees a "soft border" on the island of Ireland – is unacceptable.

For those who oppose Brexit, the democratic danger lies in failing to allow the House of Commons to make the ultimate choice over what type of Brexit (if any) to pursue. As a parliamentary democracy, the UK has, hitherto, done this and to seek to cut the House of Commons out of proceedings (as Mr Johnson's government threatens to do) is, to this school of thought, an anti-democratic outrage. For many, the

Prime Minister's advisor, Dominic Cummings has taken on a role somewhat akin to Rasputin in proceedings.

These claims can be objectively examined. The most fundamental problem is that the 2016 Referendum was held by a government that fully expected a majority to vote to remain within the EU. It was worded as if it were a "confirmatory ballot" – confirming that the people of the UK in fact remain within the EU. However, such ballots are typically used to confirm whether a particular franchise wishes to accept a constitutional change: if they do not then the situation naturally defaults to what had previously appertained.

In the Brexit case, the referendum was not to confirm a change but rather to ask whether voters wanted one. As a result, the referendum failed to offer a clear alternative. The argument that campaigners made (or did not make) the alternatives clear holds no water. It was not on the ballot paper and therefore was not an option on which to express a view. This is not a contention, it is simply a fact.

This failure to specify an alternative is what leaves us such an unpalatable dilemma. MPs found themselves mandated to change the UK's relationship with the EU, but no particular course of action was specified. Such an outcome is perfectly compatible with the UK's parliamentary democracy, *provided that elected representatives in Parliament had the ultimate say on the exact outcome.* Given Parliament's failure to reach a firm conclusion, there are two correct decisions that the executive might make, both of which involve extending Article 50 one further time:

1. Hold a General Election, after which MPs (as elected representatives) must choose a particular outcome. Were a majority of pro-"no deal" MPs to be elected (and this is a perfectly feasible outcome) then they could legitimately undertake to the EU without any withdrawal agreement (i.e. with "no deal"). That this would cause damage to the UK economy is irrelevant: people are entitled to vote in such a way as makes them materially less well off.

2. Hold a referendum on how to leave the EU. This would be plagued with [complications](), but would, ultimately, be the most democratic way in which to deal with the present conundrum. The question of which precise options should be on the ballot

paper is a difficult one: given that the previous referendum in 2016 was recent and entailed a rejection of the status quo, is it reasonable to allow "Remain" as an option? Whilst not completely settled, the closeness of that result, alongside demographic change suggest that the answer should be yes. This referendum should be legally binding and be between specific (implementable) outcomes.

In other words, were MPs to deliberately seek to ignore the result of 2016, that would indeed be undemocratic as argued by many Leavers. However, that is clearly not the case in this instance. What has occurred instead is a logjam, whereby whilst a majority in Parliament agrees (in principle) that Brexit should go ahead, there is no majority for any specific solution. Bypassing this via what would effectively be an act of executive fiat (e.g. by deliberately timing an election after 31st October), would therefore indeed be undemocratic. It is therefore incumbent upon the executive to extend the Article 50 period in order to allow one of the two options outlined above to take place.

[1] Ironically, the "bête noire" of much of the country – Michel Barnier – has very clearly recognised this for what it is, although he is perhaps too polite (and wary of being seen to involve himself in the UK's internal issues) to call it out as a specifically English issue.

[2] https://www.parliament.uk/documents/commons-information-office/m09.pdf

[3] See Hearne, D., Semmens-Wheeler, R., & Hill, K. (2018). 'Explaining the Brexit Vote: A socio-economic and psychological exploration of the referendum vote.' In A. De Ruyter & B. Nielsen (Eds.), *Brexit Negotiations After Article 50: Assessing Process, Progress and Impact.* Bingley: Emerald.