

# The Dalriada Document: Towards a Multinational Compromise that Respects Democratic Diversity in the United Kingdom

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## Abstract

Northern Ireland and Scotland could and should stay within the European Union while remaining inside the United Kingdom. This proposal need not prevent, and may facilitate, England and Wales in leaving the EU, and it is in accordance with the respective preferences of the peoples of the two Unions who voted in the advisory referendum held on 23 June 2016. Prime Minister May and her Cabinet should address carefully the question of whether to trigger Article 50, or instead to give notice that only parts of the UK—England and Wales—will be leaving the EU. The price of enforcing the entirety of the UK's exit from the EU may be lasting damage to the two Unions that make up the United Kingdom of Great Britain and Northern Ireland.

**Keywords:** UK constitution, exiting the EU, Scotland, Northern Ireland, secession, multinational states

WHAT IS SKETCHED here is a multinational compromise, of potential benefit to the peoples of these islands and the peoples of the European Union. The first draft was finished on 12 July 2016 in a cottage close to Dalriada Avenue in the village of Cushendall, in the Glens of Antrim, on the north-east coast of Northern Ireland. Across the North Channel, the Mull of Kintyre is strikingly visible in good weather. Dál Riata, also known as Dalriada or Dalriada, was an Irish-speaking polity that included parts of western Scotland and north-eastern Ireland.<sup>1</sup> The argument here is not a romantic fantasy that wills the resurrection of ancient Dalriada (or its language). Rather, it responds to the fact that the present needs and mandates in historic Ulster and Scotland are in deep danger of being ignored in current deliberations. The leadership of the Conservative and Unionist party seems determined to ride roughshod over both old and new understandings of the two Unions that comprise the United Kingdom of Great Britain and Northern Ireland. It is not alone. The leadership of the Labour party appears at least as oblivious of its multinational obligations.

## UNMAP: understandings, names, mandates, agreements and places

Words and abbreviations matter, especially when they mislead. Brexit cannot and will not happen because 'Britain', a geographical expression, is not a polity, a sovereign state or a member state of the European Union, and cannot exit from any political organisation, let alone the European Union. The new Prime Minister Theresa May's early insistence that 'Brexit means Brexit' was not only a tautology which disguised her cabinet's indecision about what exit might mean, but was also nonsensical because the portmanteau has no political referent.

To insist that Ukexit rather than Brexit is the correct word for the phenomenon that may unfold is not pedantic or professorial quibbling. 'Britain' is inaccurate shorthand for the United Kingdom of Great Britain and Northern Ireland—for which more appropriate abbreviations are either the United Kingdom or the UK (UKGB & NI is an impossible mouthful). To use Brexit does verbal violence to the nature of the UK, which is a double union-state, not a British

nation-state. It is tiresome to remind British people that Britain is not greater than Great Britain, and that Great Britain is part of the UK, not its entirety: tiresome but necessary.

The argument here tries to respect the UK's constitutional self-understandings. Uexit is legally and politically possible—that is, the secession of the entire United Kingdom from the European Union. Provisions exist in Article 50 of the Treaty of European Union to enable a member state to begin to negotiate its secession with its soon-to-be ex-partners in the European Union's institutions. But before that article is engaged, which we are now told will occur before the end of March 2017,<sup>2</sup> a constitutional pause would be wise to consider the profound crisis of legitimacy that may follow if it is invoked and followed through as currently envisaged. The Prime Minister has insisted that 'We voted in the referendum as one United Kingdom, we will negotiate as one United Kingdom, and we will leave the EU as one United Kingdom.'<sup>3</sup> The first clause is untrue, both because Gibraltar, which is not a constituent unit of the UK, also voted and because the vote was counted by constituency and by constituent unit of the UK; the second clause threatens to exclude Northern Ireland and Scotland from having any proper role in negotiations that affect their interests and their rights; and the last clause is wishful thinking. The crisis that will follow from engaging Article 50 on these understandings will deeply destabilise the two Unions that make up the United Kingdom—a vista that should not be ignored in the hope that these difficulties will simply disappear, or be easily resolved during or after negotiations under Article 50.

Neither the Conservatives nor Labour currently have mandates that extend throughout the UK or Great Britain; nor do they have mandates from general elections to pursue exit from the EU. The Conservatives are led by a person without a mandate from a general election and who so far owes her standing to being less maladroit than her party rivals. The Labour party is led by someone with two recent mandates from his party's members but who suffers under the handicap of being the recipient of a super-majority vote of no confidence by the parliamentary Labour party. The two largest

parties in England and Wales are the two largest parties in Westminster's House of Commons, but neither enjoys a majority mandate from the 2015 general elections in both England and Wales. These two parties, and their leaders, need to be constantly reminded that they have no significant internal Scots or Northern Irish mandates through which to consider the result(s) of the *advisory* referendum of June 2016.<sup>4</sup> Neither the Scottish nor the Northern Irish executive has any Conservative or Labour members, and the Labour party is not the leading opposition party in either Scotland or Northern Ireland.

Careful thought about the UK, especially its internal constitutional rules, agreements and conventions and its treaties with its immediate neighbours, has to be part of the mature reflection warranted by the referendum result(s). That has so far mostly been lacking in what has been a largely English conversation about foreigners, or trading with foreigners—with high doses of over-indulged national self-esteem. The Conservative and Labour parties are in need of vigorous reminding that the United Kingdom is a multinational state, a partnership of peoples, a country of countries, a nation of nations, a union-state. It is not a unitary state—neither an English nation-state nor a British nation-state. When opposing secession from the UK, English politicians have frequently told the Scottish and the Northern Irish as much. But in the current ill-considered rush to secede from the EU, English politicians talk as if the UK was an indivisible Jacobin republic of Britons. The political steps being considered—and demanded—to engage Article 50 may permanently destroy the merits of defining the UK as a multinational union-state. If taken, they will emphatically confirm the claims of those who have maintained that the verbiage of multinationalism has always been mere camouflage for what has always been Greater England (or Greater England and Wales). Among those who have held that view are Irish republicans and Scottish nationalists.

The constitutional fact of two unions, different in nature, is not reflected in current discourse in England and Wales, and that has to change lest relations become even more fractious. The Union of Great Britain

encompasses islands off the coasts of Scotland and England, but no part of the island or islands of Ireland. 'The British mainland' is the contiguous landmass of Scotland, England and Wales, in contradistinction, for instance, to the Scilly Isles, Anglesey and the Hebrides, to name a few genuinely British (though also Celtic) isles. Northern Ireland is not geographically British, as a map inspection and the historical record confirms. The Union in which Northern Ireland is a partner is with Great Britain—the previous relevant Union was between Great Britain and Ireland; the Union of Great Britain which preceded these unions with Irish entities runs in parallel with them: it is the Union of Scotland with England (in which Wales was presumed incorporated). There are therefore two Unions, different both in the modes in which they were made and in the ways in which they have evolved. Hitherto major proponents of the UK have never defended either Union as a Greater England. Insisting that 'we will leave the EU as one United Kingdom' amounts, however, to doing just that.

The Prime Minister; the Westminster Parliament, especially English and Welsh Conservative MPs; the Constitutional Committee of the Lords; and the lawyers who advise the government need to consider whether to take steps that may break up the Union of Great Britain, and, equally vital, to ponder the collateral damage that may occur to the intricate and delicate agreements and conventions that qualify the Union of Great Britain and Northern Ireland. Ukexit may not only gravely damage the internal stability and economic prospects of Northern Ireland, but also damage the UK's relations with sovereign Ireland. Prudence alone requires that negotiating teams currently being established in Westminster and Whitehall should recall that Ireland will remain a member state of the EU, and that it is in the UK's interests to retain friends within the counsels of the EU.

## Northern Ireland

Northern Ireland is in partnership with Great Britain in a Union state. But, unlike Scotland, it has never been a state, except in colloquial usage. It has, however, recently

been on full track to become a 'federacy', that is, organised in a distinctively federal relationship with Great Britain, in which its constitutional and institutional arrangements would not be disturbed by unilateral measures taken by the Westminster Parliament. In solemn UK declarations, statutes and agreements, in conjunction with the rest of Ireland, Northern Ireland has been recognised as a twin unit in exercising the right of self-determination. In the Joint Declaration for Peace, the Downing Street Declaration of 15 December 1993, the Prime Ministers of the two sovereign states agreed: 'The British Government agree that it is for the people of the island of Ireland alone, by agreement between the two parts respectively, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish.' The declaration also recognised the right of both parts of Ireland to remain divided until such concurrent consent occurred, but subject to the arrangements subsequently agreed in 1998. A settled expectation in the making of the Declaration, subsequently built into the agreements that constitute the Belfast or Good Friday Agreement—partly encoded in the Northern Ireland Act of 1998—was that both the UK and Ireland would be members of the European Union. The two states had just ratified the Treaty on European Union before the Declaration was issued.

Northern Ireland is neither legally nor geographically part of Britain. It has a separate statute book, and a separate judiciary, and a distinctive power-sharing executive and Assembly, the rules of which reflect an agreed partnership among those who designate as unionists, nationalists or others. The complexities of these current arrangements need not be fully described here.<sup>5</sup> They were established, however, in two referendums held in both parts of Ireland on the same day in 1998. One question now appropriate to be put before courts in Northern Ireland and London, in the Westminster Parliament and in the institutions of the European Union is why an advisory referendum held in 2016 within the UK and Gibraltar, in which the weight of Great Britain was preponderant in population, must be read by the UK government to enable it unilaterally

to supersede or abrogate key features of the agreement ratified by referendum in both parts of Ireland in 1998, and subsequently ratified in a treaty registered at the United Nations, and which affects two member states of the European Union, not just one. Another question is why that advisory referendum can be read to support just one possible course of action, namely the exit of the entire UK from the EU, without advice being taken by Parliament from the governments of Northern Ireland, Scotland and Ireland, and their respective Assembly and Parliaments, and without advice being taken by the UK government from its own Parliament. The 1999 treaty and the 1998 agreement it protects contain implied or explicit provisions that assume the sovereign states of the UK and Ireland are member states of the European Union. These facts help make sense of the North–South Ministerial Council, which has jurisdiction on some cross-border and some all-island matters, and on EU matters, which presuppose no hard border between Ireland and Northern Ireland.

The Westminster Parliament must reflect on whether the damage to the arrangements within Northern Ireland that would flow from the United Kingdom's complete withdrawal from the European Union would be just, democratic or necessary. How can an advisory UK (and Gibraltar) referendum outcome justly wipe out the consequences of a Northern Ireland and Ireland referendum, which changed both states' constitutions? Justice would require that all parties to the previous referendum result agree that the 2016 referendum may have such an effect. There is no common demos across the UK and Ireland, so there can be no democratic rule that says Ireland must give way to the UK when the UK changes its mind on a solemn and binding treaty. There is, further, one starkly important democratic fact that leans against comprehensive Ukexit: the people of Northern Ireland, a distinct partner to a recognised right of self-determination with Ireland, voted solidly to remain within the EU in June 2016, by a greater margin than that by which the English voted to leave.

Lastly, despite Theresa May's insistence, it is not necessary to interpret the referendum outcome as implying that the whole of the UK has to leave the EU. The referendum, all

were told, was advisory. Advisory to whom? The Crown? The Westminster Parliament? The units and institutions of the United Kingdom of Great Britain and Northern Ireland? Moreover, as we shall see, a constructive compromise is available that would be both just and democratic.

## Scotland

On English understandings, Scotland had statehood before the Union of Crowns of 1603 and until the Union of Parliaments of 1707, though subsequently, in 1997, a new Scottish Parliament was established under delegated authority from the Westminster Parliament. The Scottish Parliament, Scottish lawyers and Scottish nationalists have their own understandings, however. They do not all regard the Act of Union as an incorporating union, though they know that English judges and jurists act and talk otherwise. Not all accept that the establishment of the Scottish Parliament was merely a revisable and delegated act of the Westminster Parliament. The people of Scotland, in a referendum held in 1997, ratified the reformation of the Scottish Parliament, and it has subsequently expanded its powers, with the consent of its people, albeit in negotiations with the Westminster Parliament. Under the Sewel convention, Westminster normally legislates on devolved matters only with the express agreement of the Scottish Parliament, after proper consideration and scrutiny of the proposal in question, which raises the question of whether the Westminster Parliament will break with this convention to accomplish Ukexit.

As with Northern Ireland, the Prime Minister, the Cabinet and the Westminster Parliament must reflect on whether the damage to the recent arrangements agreed with Scotland that would flow from the United Kingdom's complete withdrawal from the European Union would be just, democratic or necessary. It would not be just, partly because it would reverse express commitments given when Scotland voted in a referendum in 2014 to remain within the UK—the Scots were assured the UK would be staying in the EU, and that if they left the UK they would have to apply to join the EU, so that if they wanted to stay in the EU

the most secure way to do so was to stay in the UK. It would not be democratic, because the people of Scotland, a recognised unit within the Union of Great Britain, voted solidly to remain within the European Union; and it is also not necessary, because the referendum of 2016 is advisory, and a constructive compromise is available that would be just and democratic.

## Reading the referendum result(s) is not straightforward

The June 2016 referendum was held to advise the decision-making of the government and Parliament of the United Kingdom. The result(s) of the referendum is/are not binding on the government or Parliament, though it would be bizarre and unreasonable for the result(s) to be completely ignored. The use of result(s) in the phrasings employed here is deliberate.

The people did not speak with one voice—see Table 1. The four peoples who comprise the United Kingdom provided four different mandates, two for remaining and two for leaving the European Union. And in each of the two Unions one partner voted to leave and one voted to remain. England (and Wales), one partner in the Union of Great Britain, voted to leave, whereas Scotland voted to remain. In the other Union, Great Britain (as a whole) voted to leave, whereas Northern Ireland voted to remain. The ballot papers cast in the 2016 referendum were counted in the electoral constituencies that fill the House of Commons in Westminster; in the constituent units of the two Unions that make up the United Kingdom (i.e. England, Northern Ireland, Scotland and Wales); and in Gibraltar, a British Overseas Territory, formerly a Crown colony, whose enfranchised denizens were allowed to vote because its jurisdiction is within the EU. Since the counts deliberately allowed these outcomes to be clear to all, they require the mature consideration of the constitutional authorities of the United Kingdom and its partners in the EU—with whom it will have to bargain if Article 50 of the Treaty on European Union is invoked.

The vote in Gibraltar obliges special reflection, and not just because almost 96 per cent

**Table 1: The referendum outcomes in the constitutionally distinct territories of the United Kingdom and Gibraltar**

Unit in Which Ballots Were Counted	Percent Voting to Leave the EU	Percent Voting to Remain in the EU
United Kingdom & Gibraltar	51.9	48.1
England	53.4	46.6
Wales	52.5	47.5
Northern Ireland	44.2	55.8
Scotland	38.0	62.0
Gibraltar	4.1	95.9

of the enfranchised on the Rock voted to remain in the EU, but also because their votes rendered the referendum anomalous—which is not to suggest any view about irregularities in voting. Though the question posed in the referendum was about the future of the United Kingdom in or out of the EU, very strangely, the right to answer the question was not confined to the units of the UK. Instead it was put to territorial units subject to the legal sovereignty of the Westminster Parliament that were within the European Union's jurisdiction, that is, the United Kingdom (of Great Britain and Northern Ireland) and Gibraltar. Had the result of the referendum been even closer than it was in the UK as a whole, it is unclear what constitutional reasoning would have justified potentially pivotal ballots in Gibraltar shaping the membership decisions of the UK. Consider what would have happened had Gibraltar's approximately 20,000 remain votes been decisive in the total vote count. Within the UK a crisis of legitimacy, and calls for a second referendum, would have immediately occurred among the supporters of leaving the EU. In short, the appropriate question to have put to the relevant voters on their ballot papers would have been, 'Should the United Kingdom and the British Overseas Territory of Gibraltar remain within the European Union or leave the European Union?' This was not the only flaw in the entire referendum process, but it was not the least of them.<sup>6</sup>

Not only must the Westminster Parliament, the institutions of the two Unions and



the institutions of the EU reflect on the different result(s) of the referendum in the five constitutionally distinct territorial units where votes were aggregated, but they must also recall that there was a mismatch between the question's wording and the places where it was posed. It was a hybrid referendum question because it bound entities together that are not organised under the same set of constitutional norms. The proposal advanced here is to consider a compromise that would satisfy the mandates expressed in the referendum in all four units of the two Unions, and Gibraltar.

### **The case for the compromise stated negatively**

The compromise proposed here is a constitutional salvage operation, proposed to prevent damaging consequences ensuing to two recent constitutional settlements regarding Scotland, as well as in and over Northern Ireland. During the 2016 referendum debates these settlements were not centre-stage among the English and Welsh publics, nor were they discussed among voters throughout the United Kingdom in an informed manner. The proposed compromise is therefore partly advanced in a negative vein. Though the compromise proposed here is driven by the need to avoid potentially negative consequences from Ukexit, especially for Northern Ireland and Scotland, it also has positive merits, which will be presented later.

For those concerned about the future of Scotland in the UK, the compromise would help to avoid the prospect of a referendum on Scottish independence, promoted by the SNP and the Green party, leading to the break-up of the union of Great Britain. Politically, however, the Scottish Parliament has every right to hold such a referendum in pursuit of independence—not just because such a referendum has been lawfully held before, but also because the terms specified in the SNP's election manifesto have been met. In launching the SNP's 2016 manifesto, Nicola Sturgeon declared: 'We believe that the Scottish Parliament should have the right to hold another referendum if there is clear and sustained evidence that independence

has become the preferred option of a majority of the Scottish people—or if there is a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out of the EU against our will.' No one can deny that significant and material prospects now exist that Scotland will be taken out of the EU against the will of its people. The political mandate of the SNP to pursue such a referendum, measured by its share of the vote received from the Scottish electorate in 2016 (46.5 per cent), is actually much more securely grounded than that received by the Conservative party in the UK in the general elections of 2015 (36.1 per cent).

The same constitutional compromise could diminish the likelihood of constitutional turbulence spilling into and over Northern Ireland, and destabilising both the peace process and Union with Great Britain. All careful observers will have noticed that on the same day that First Minister Nicola Sturgeon publicly indicated her intention to start preparations for a second Scottish referendum, the Deputy First Minister of Northern Ireland, Martin McGuinness of Sinn Féin—equal in powers and status to the First Minister, Arlene Foster of the Democratic Unionist party—demanded that a poll be held, as is possible by law, to enable the reunification of Ireland to be voted upon. Sinn Féin's assembly leader had a point. Many in Northern Ireland, both Northern nationalists and liberal unionists, fear that Ukexit will restore a hard border across Ireland, and strip away core European components of the Good Friday Agreement of 1998. Politically, they find the idea that the narrow outcome of a UK (and Gibraltar)-wide referendum should automatically override the terms of the Ireland-wide referendums of 1998, and the wishes of the majority who voted to remain within the EU within Northern Ireland, to be completely unacceptable. They would sustain the same position even if the Leave campaign had won a much larger majority in England and Wales. Locally it is said that Good Friday should not be superseded by Bad Friday.

The Conservative UK Secretary of State for Northern Ireland, Theresa Villiers, who campaigned for the UK to leave the European Union, almost immediately declared that the

(legally reviewable) test to have a border poll of the kind requested by the Deputy First Minister had not been met. She has since been sacked, and replaced by the interestingly surnamed James Brokenshire. We shall have to wait to assess whether her ruling was reasonably reached—if there is a legal review—but no one should assume that the test would not be met in future. In any case, it is within the political rights—whatever the legal circumstances may be—of the people of Northern Ireland and the Northern Ireland Assembly to demand a border poll to give them the option of remaining within the EU through Irish reunification—particularly if there is no alternative that respects the clear local majority preference to remain within the EU in Northern Ireland. But there is such an alternative: the compromise that is outlined here.

The very same compromise may also weaken the pressure from the Spanish government for the UK to cede its sovereignty over Gibraltar, a subject on which Westminster and Whitehall have remained silent, but on which the Spanish state cannot be expected to remain silent if and when Article 50 is invoked.

## **The multinational compromise for the peoples of the United Kingdom**

The core idea behind the compromise is very simple. Each mandate in each territory expressed in the referendum of 2016 should be respected, but without breaking up either of the two Unions of the United Kingdom, or Gibraltar's ties to the UK.<sup>7</sup> Under this compromise, in due course England and Wales will leave the EU, in accordance with the preferences of their respective publics, while Scotland and Northern Ireland will remain. No break-up of either Union in the UK is envisaged or encouraged, and no fresh obstacle is proposed that would inhibit the secession of Scotland from the UK, or that would block the reunification of Ireland.

The United Kingdom would remain within the European Union, but a much diminished portion of it, and it would therefore lose much of its representation and voting powers that flow from being part of a

large populous state within the EU, because its most populous unit, England—along with Wales—would cease to be within the EU. To work this compromise, and that is why it is appropriately called a compromise, requires continuing (albeit reduced) UK membership of the European Union. To work, it therefore does not require Article 50 of the Treaty of European Union to be invoked. Though it is possible to imagine that this compromise, or something resembling it, might emerge from Article 50 negotiations, it is more likely to transpire if Article 50 is not engaged.<sup>8</sup> What is being proposed here may be treated as an amendment to Article 52 of the Treaty of European Union, a redefinition of the scope of the territorial application of the Treaties in the current (and remaining) member state: a possible addition to Article 52 might read as follows: 'The United Kingdom will apply the provisions of the Treaties only in respect of Scotland and Northern Ireland.' Article 52 (2) could be amended by adding, for instance, 'in relation to the territories mentioned therein' after 'specified'.

The UK would give notice to its partners that it intended no longer to apply the primacy of European law over UK law in England and Wales, whereas EU law would continue to be upheld in Scotland and Northern Ireland, and that it intended to apply its treaty obligations accordingly. It would propose continuing UK participation in EU institutions—on behalf of Northern Ireland and Scotland (and perhaps Gibraltar)—in ways outlined below: proposals that the EU institutions would have to consider, but over which they would have no immediate veto, because the UK would not be leaving the EU. For the compromise to work it would be very helpful, though not absolutely required, for the UK government to seek externally associated status for England and Wales, as well as agreements with the European Union, which will make the UK function more harmoniously. (Perhaps Article 355 of the Treaty on the Functioning European Union would have to be amended to define the external association of England and Wales.)

## **Is the compromise feasible?**

The United Kingdom already has parts of the territories under its jurisdiction within

the European Union and others outside or outwith it, as the Scots would put it. The compromise proposal suggested here would lead to a major reconfiguration of the UK's relations with the EU, to give effect to the wishes of the people of England and Wales. But it would not be unprecedented. Aside from Gibraltar, all British Overseas Territories (the former Crown colonies) are outside the European Union's *acquis communautaire* (the name for its accumulated body of law). They are either exempt, or enjoy various derogations, from the UK's obligations under EU law.<sup>9</sup>

Within the British Isles, properly so called, there are three members of the British–Irish Council—Jersey, Guernsey and the Isle of Man—which are not part of the European Union, but are obliged to conform to some aspects of EU law.<sup>10</sup> The status quo in the UK is therefore one in which parts of the territories under the Crown are in the EU, parts are outside, and parts are in and out. So, it is already true that the UK has part of the territories subject to the sovereignty of the Crown—and therefore the advice of the Westminster government—within the European Union, and parts outside. Existing precedent does not require whole-state membership of the European Union.

Not only are there precedents within UK sovereign lands, but they also exist among other EU member states. Article 198 of Part IV of the Treaty on the Functioning of the European Union specifies: 'the Member States agree to associate with the Union the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom.' The European *acquis* does not apply to these overseas countries and territories. Instead, detailed rules and procedures are spelled out in what is known as the Overseas Association Decision. So, in principle, several member states of the EU have precedents for having parts of their states inside and others outside (at least some of the laws and institutions of) the European Union.

The Faroe Islands<sup>11</sup> and Greenland are part of the kingdom of Denmark, but they are not within the EU. Greenland, a very large territory, is especially interesting because it seceded from the EEC, completing the process in 1985, while Denmark

remained within the EEC. This change had few consequences for political power within the European Union because of Greenland's small population, and it had few implications for Denmark's power and representation within the European Union. Variations on the compromise proposed here are sometimes called 'the reverse Greenland' solution, perhaps especially among legal scholars in Scotland. This may be an unhelpful metaphor for at least three reasons—it makes some people think that the proposal somehow means bringing Greenland back within the institutions and laws of the EU; it makes others think that the conversation has somehow veered into a discussion of how to reverse the melting of the polar ice-caps; and, lastly, the analogy does not stand up: Denmark is the member state, and Denmark is still in the EU. Greenland is, however, a useful precedent for the idea that part of a member state, a very large part—the largest territorial part—has seceded from European institutions without affecting the member state's membership.<sup>12</sup> It cannot provide a direct precedent for this compromise, however, because the populations of England and Wales jointly number far more than those in Scotland, Northern Ireland and Gibraltar—a reality recognised in the preliminary proposals below.

## Is this compromise politically possible?

There is, I have suggested so far, no fundamental legal impediment to this proposed compromise, and it has many political merits aside from those of holding the UK together, abiding by solemn international treaties with Ireland and other member states of the EU and respecting the distinct mandates in different parts of the UK. Negotiating a complete UKexit for a new Prime Minister without an electoral mandate of her own from the public is going to be a demanding mission, especially if there is a second sterling devaluation, a capital strike or capital flight, a recession and internal party divisions. Calls for 'unity' will not disguise the fact that taking the entire UK out of the EU on a 52–48 referendum outcome will be deeply divisive, and could destabilise the



governing party (a majority of whose MPs voted to remain in the EU).

Agreeing a common UK position for negotiations with soon-to-be ex-partners, in the absence of a coalition government and without institutionalised consultations with the Northern Ireland Assembly and Executive or the Scottish Parliament and Scottish government, is likely to be very difficult, and may increase rather than reduce political antagonisms. Imposing Scotland's withdrawal from the European Union against its will recalls bitter memories of the imposition of the poll tax by a Westminster government without a mandate in Scotland. Breaking a treaty with Ireland, and damaging the Good Friday Agreement by recreating a hard border in Ireland, will bring back well-known adages about 'perfidious Albion'—a phrase that does not generally derive from foreigners' historical confusions.

This compromise would offer the new Prime Minister a chance to work creatively to craft the details of a compromise that would be genuinely consensual—allowing each unit of the Union to follow its most preferred path with regard to the European Union. If satisfactorily negotiated and accomplished in the UK, it would have the considerable attraction for a new Prime Minister and Cabinet of avoiding the difficulties involved in negotiating a wholesale secession of the UK under Article 50—in which, as we shall see, every member state as well as the EU institutions may have a practical veto over any agreements between the EU and the UK. Recall that these difficulties may occur as the governing party in the UK might be campaigning to keep Scotland in the Union, while also renegotiating the Good Friday Agreement. This compromise proposal would, however, require keeping the UK (minus England and Wales) within the European Union, and would require the Prime Minister to acknowledge this fact.

## **How might the compromise work for Scotland and Northern Ireland within the EU?**

The Westminster Parliament would give effect to the advisory referendum by making provision for different parts of the

Union to have different relations with the EU. EU law would retain its legislative primacy over UK and devolved law within Scotland and Northern Ireland, whereas the European Communities Accession Act would be amended in the relevant ways so that it did not apply in England and Wales. Bluntly put, England and Wales would 'take back control', while Northern Ireland and Scotland would keep their relationships with the European Union. How that might work requires some brief thought experiments—I am not wedded to these details, and would welcome proposed improvements.

The European Union is not just a free-trade zone or single market with four freedoms. It is also an international organisation with confederal characteristics, in which each member state currently appoints one commissioner, appoints ministers with voting rights in the functional Council of Ministers, elects Members of the European Parliament, nominates one judge to the European Court of Justice and sends its head of government or state to the European Council. Membership of the Union is open only to states as defined in international law and EU law is relayed through member states (for example though directives which are 'binding ... upon each Member State'; only courts 'of a Member State' may refer questions to the Court of Justice for a preliminary ruling). So, how might UK representation in EU institutions and voting rights work according to the compromise proposed? Let us build from the easiest to the most difficult questions, ensuring that Scotland and Northern Ireland, through the UK, have a fair, legitimate and proportionate share in EU agenda-setting, EU law-making and EU judicial regulation and review.

Northern Ireland and Scotland would retain their existing MEPs, elected according to their respective versions of proportional representation, and would have their respective number of MEPs increased or reduced according to the apportionment rules of the European Parliament. England and Wales would have no MEPs. Gibraltar currently is part of South-West England for European Parliament elections, so special arrangements would have to apply to facilitate its representation.

The United Kingdom is currently entitled to nominate one Commissioner. In the past the major political parties informally rotated the two posts that the UK used to enjoy, a convention that ceased when the number was reduced to one. The Scottish government and the Northern Ireland Executive, perhaps meeting under the auspices of the British–Irish Council, could alternate in having the right to nominate the UK’s commissioner. Reflecting the differences in population size, the sequence of nominations could work as follows: the first nomination would be by the Scottish First Minister on behalf of the Scottish government after consultation with the Northern Ireland executive; the second nomination would occur in the same way; the third nomination would be by the Northern Ireland First and Deputy First Ministers on behalf of the Northern Ireland Executive, after consultation with the Scottish government.<sup>13</sup> The nomination sequence would then be repeated. This ratio of 2:1 could be modified if population ratios shifted significantly.

The UK’s nomination of a judge to the Court of Justice of the European Union would work in the same way, except that Northern Ireland would have first place in the nomination sequence, to balance its last place in the nomination sequence for a Commissioner.

The role of ministers would be simple in one way, and less simple in another. Scotland and Northern Ireland could use the existing British–Irish Council to deliberate and, if necessary, to instruct ministers on UK policy (for Scotland and Northern Ireland). Scotland and Northern Ireland could allocate the UK’s portfolios in the Council of Ministers among themselves, either apportioning by population, with one country serving and the other providing an alternate, or—better—by appointing in sequence to each portfolio, so that, for example, in Agriculture, the Northern Irish minister would serve for thirty months, followed by the Scots minister for thirty months, with arrangements for regular consultation and coordination. Legal and political arrangements and precedents already exist: Belgian regions may represent Belgium, and there are provisions for German Länder to represent Germany in the Council of Ministers, on matters within their

domestic powers.<sup>14</sup> The voting powers of these ministers would be equal to the entitlement of the reduced UK, depending on the voting agreed under EU law. More complex roles for ministers would arise in zones of EU decision-making that are not typically devolved powers.

Scottish and Northern Irish membership of other EU organisations and bodies—such as the Committee of the Regions—should present no institutional or constitutional obstacles to this compromise. For example, UK ambassadors of Scottish or Northern Irish origin would function in the Committee of Permanent Representatives (COREPER).

The UK Prime Minister—whose mandate derives from the whole of the UK, but principally from electors in England and Wales—could not comfortably represent the UK in the European Council of Heads of State and Government. It can be no part of this proposal to request or demand the formation of an English Parliament and government, which would certainly ease the institutional difficulties attached to this proposal. There are two obvious solutions: either the Scottish and Northern Irish First and Deputy Ministers alternate in representing the UK in the EU or a High Representative could be appointed to play the role of trustee for both governments, and could consult with the Westminster government so that friction with the rest of the UK would be avoided or minimised.

One future role of the Westminster Parliament under this compromise would be to ratify and appropriately implement EU law that applies to Northern Ireland and Scotland, ensuring that Scotland and Northern Ireland have the same EU law. This would be best accomplished by a legislative committee of the Commons and Lords, advised by seconded officials from Scotland and Northern Ireland. MPs from England and Wales could not vote on such laws. The principle of having MPs who are in for some matters that require voting and out for others has already been accepted by the Conservative party, and implemented in provisions that are called ‘English Votes for English Laws’. It would be up to the Westminster Parliament to decide which components of EU law it voluntarily wished to apply to English and Welsh law to make the

possible external association of England and Wales work—a convenience that may be helpful.

The currency is a reserved Crown power. The proposed compromise would not lock Scotland and Northern Ireland into the euro-zone, because as part of the UK, Scotland and Northern Ireland would inherit the entire UK position under the Maastricht treaty (namely, they would stay with sterling unless they wanted, and unless Westminster wanted to allow them, to join the euro—not immediately likely scenarios). However, Scotland and Northern Ireland would not be able to apply the terms that Prime Minister Cameron recently negotiated on the supposition that all of the UK would remain in the European Union.

## Within the UK

Under this proposal, complex issues would arise regarding UK–Scottish and UK–Northern Irish relations, but before these are briefly addressed it is important to emphasise that these relations are already complex, and that permanent damage could be done to the texture of these relations by a constitutionally reckless Ukexit.

What would be done if an EU law affects a currently ‘reserved power’, that is, a competence over which the Westminster government (and not Scotland or Northern Ireland) has the relevant power? Several resolutions are possible. In one, the UK, recalling its participation in EU representation and law-making institutions, legislates to apply such laws to Scotland and Northern Ireland only. Perhaps the UK will negotiate a treaty with the EU in specific domains, which do not touch upon the single market and the four freedoms, which may place restraints on the application of EU law to Scotland and Northern Ireland—for example, inhibiting their membership of the common currency of the EU, inhibiting their participation in security, intelligence and defence arrangements inconsistent with the UK’s membership of NATO or (trickier still) preventing Scotland or Northern Ireland from damaging a vital interest of the UK as a whole.

In another resolution, the powers devolved to Scotland and Northern Ireland could be expanded to cover the full domains

of EU law-making; in yet another, one resolution of these matters would apply to Scotland, whereas another would apply to Northern Ireland. Several permutations of these ideas can be imagined. The United Kingdom is already used to internal asymmetrical relationships in the distribution of powers.

Consequences would flow for the courts from what has been elaborated about how this compromise proposal would work. The UK Supreme Court would be required, as at present, to disapply Westminster law in Scotland and Northern Ireland if it violates EU law, while such law would continue to be valid in England and Wales.

## Difficulties and benefits of this compromise

Scotland, England and Wales and all of Ireland, North and South, could remain, as at present, an internal passport-free zone. Neither the UK nor Ireland is obliged to be part of the Schengen Agreement.

However, one negative consequence of this compromise would be a hard customs border in the Irish Sea if the UK government did not negotiate for England and Wales to share a customs union with the EU. Another effect would be a hard customs border between Scotland and England, again if and only if England and Wales decide not to be part of a customs union with the EU.

If all of Ireland and Scotland remain in the EU but England and Wales do not share the EU’s customs union then there cannot be a single market in the UK, as defined by the EU, and therefore a customs barrier will have to exist. But a hard customs border would materialise if a referendum led to Scotland’s independence after the UK had left the EU and Scotland had joined, and it will materialise across the border of Ireland and Northern Ireland if the entire UK leaves the European Union without an agreement on a customs union—as now appears more likely as a consequence of the Prime Minister’s speech at the Conservative party conference of October 2016.

Ireland—North and South—and Scotland could not join the Schengen Agreement because that would mean that England and

Wales would lose control over immigration. The Leave side in the referendum campaign demanded such control. But no part of the Isles is part of Schengen at present, and there is no evidence that a majority in any of the places in the Isles wants to be.

One clear benefit of this proposal is that enterprises currently located in England and Wales could relocate to EU zones within the UK, which would soften the negative consequences of an entire Ukexit. Thereby, the UK as a whole would continue to enjoy the tax revenues and employment benefits from those organisations that require their headquarters to be within the EU.

These arrangements would leave England and Wales to experiment with whatever policy freedoms they preferred and which they believe they have been blocked from developing by membership of the European Union. Careful evidence could then emerge about the impacts, negative or positive, of such policy variation within the UK. Scotland, Northern Ireland and Gibraltar would, of course, have to pay their appropriate dues, as well as receiving appropriate benefits from the UK's reduced membership of the EU.

## Citizenship and migration

Citizenship and migration law would have to be reconsidered, but the ensuing difficulties could be negotiated. These matters will be on the table anyway. The UK and Ireland already grant one another's citizens full citizenship rights (including voting rights) after a brief period of residence and there are no proposals to change this situation, and both Ireland and the UK have declared that they want to keep the common travel area within the Isles.

What may be trickier are the rights of EU citizens in different parts of the UK under this proposal. In negotiations with the EU, Article 45 of the Treaty on the Functioning of the European Union will be at issue. This article reads:

- 1 Freedom of movement for workers shall be secured within the Union.
- 2 Such freedom of movement shall entail the abolition of any discrimination based

on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

- 3 It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
  - a to accept offers of employment actually made;
  - b to move freely within the territory of Member States for this purpose;
  - c to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
  - d to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.
- 4 The provisions of this Article shall not apply to employment in the public service.

To be consistent, in addition to being relieved of their obligations under other EU law, the proposal here would have to accept that England and Wales may be excluded from the purview of Article 45 and associated regulations and directives.<sup>15</sup>

Normally, EU citizens are entitled to rights on par with UK citizens regarding access to (a) employment; (b) conditions of work and employment; (c) social and tax advantages; (d) membership of trade unions and eligibility for workers' representative bodies; (e) training; (f) housing; (g) education, apprenticeship and vocational training for the children of Union workers; and (h) assistance afforded by the employment offices. To work, the Dalriada Document, or proposals like it, would require that EU citizens residing in Scotland and Northern Ireland could not move to access comparable entitlements in England and Wales, and—perhaps more importantly—that EU citizens living in England and Wales do not take advantage of EU rights by establishing notional residence in Northern Ireland or Scotland. Administrative mechanisms would be required to police this situation, but would involve no great leap in

regulatory burdens. Article 3 of Directive 2014/54/EU already requires that member states establish bodies for the purposes of monitoring and enforcing Article 45 rights.

Some constitutional and legislative reconstruction of the UK would therefore be necessary. The starting question to be posed to Conservative and Labour leaders, and to the UK Parliament, is whether the Welsh and the English publics, elected politicians from England and Wales and members of the Lords of English and Welsh origin believe that the first cost of taking back control of 'their' own affairs should be the imposition of control over Scotland and Northern Ireland.

## Negotiating matters

States' interests in making bargains and treaties are rarely based on profound generosity. The divorce agreement which the Leave side emphasised that it wished to negotiate with the EU has to be acceptable to the existing member states of the EU, or else there will be a chaotic UK departure without agreement.

We must, however, distinguish between a withdrawal agreement and trade agreements. Most EU free-trade agreements have been what lawyers call 'mixed agreements'—that is, they require the consent of the EU institutions and ratification by all of the member states—because such agreements usually contain rules going outside the scope of trade policy. Will the UK's withdrawal agreement include or postpone the negotiation of a trade agreement? The Leave side has always assumed that a 'divorce agreement' would deal with EU–UK trading conditions, and would be negotiated under qualified majority voting by EU member states. But, in practice, it is possible that each member state may have a veto in agreeing a negotiated withdrawal, however narrow its terms, though this possibility is debated. The question is: does each member state still have the ability to invoke a vital national interest, and could a member state claim a vital national interest in some arrangement though which the UK is seeking to withdraw from the EU? If so, there might be no withdrawal agreement and the treaties would

simply cease to apply to the UK in, say, the spring of 2019 (Article 50(3) TEU), creating a legal mess. The content of the Luxembourg Compromise of January 1966—when General de Gaulle forced the recognition of member-state veto rights—has, according to some jurists, been superseded, but politicians will create the mess that may unfold. For Irish politicians the question may become: can the UK withdraw from its international obligations to Ireland simply by leaving an international organisation, without Ireland's consent?

Prime Minister May should be pressed to address carefully the question of whether to trigger Article 50, preferably after consultation and legislation by Parliament and the institutions of the two Unions, or instead to give notice that only parts of the UK—England and Wales—will be leaving the EU. Under the former option the UK has to bargain with the EU-27; under the latter option it reorganises its relations with the EU, enabling England and Wales to leave. The Prime Minister and Cabinet ministers who lead negotiations with their European Union counterparts will soon realise that the Irish and Spanish states, as well as many others, have voting power over the divorce agreement—and may enjoy *de facto* veto powers over any subsequent agreements that encompass trade agreements. Spain and Ireland will not be alone. There will be many states with an interest in protecting their stranded 'diasporas' (their citizens living and working within the UK), not just the flow of capital, goods and services.

The Prime Minister has ruled out the option of leaving the EU to join the EEA, because the UK would remain subject to the Court of Justice of the EU, and be obliged to accept freedom of movement.<sup>16</sup> The 'EEA minus' proposal is the suggestion that the UK will join the European Economic Area, while retaining control over immigration from the EU. In the full EEA—currently inhabited by Iceland, Norway and Liechtenstein—the non-EU members pay a hefty membership fee to the EU, accept but do not make the rules over the single market and accept the freedom of movement to work. Exactly why key EU leaders and member states would grant the UK better terms than Iceland, Norway and Liechtenstein has never



been explained—and that is to leave aside the question of whether to do so would be consistent with the ethos of the EU's treaties. Here perhaps is an example of the UK's leaders proposing to have their cake and eat it, as Foreign Secretary Johnson puts it. No doubt he has counsel on how to manage others' refusal to digest this avaricious negotiating gambit. Put without metaphors, why should the EU member states accept a deal that would encourage other member states to exit their obligations, in order to achieve the UK's new status? If the UK rejects the full EEA deal *and* staying within the customs union, then there are only two remaining exit options for the entire UK: a trade agreement (or agreements) with the EU, negotiated over a long period with full veto rights retained by each member state, or no deal at all.

The constitutional compromise suggested here, by contrast, provides the UK with a negotiating pause, a moment to calm the UK's territorial politics. It would give the EU a continuing stake in some of the UK, while enabling Northern Ireland and Scotland to remain within the EU. It also has the merit of facilitating reversibility: England and Wales could go back into the EU later, in due course, without having to accept an accession programme in which there would be no Maastricht-style opt-outs on offer. As currently conceived, the UK would be leaving forever—an injudicious step to take with a UK-wide 'mandate' of 52 per cent—and setting up disappointments for future generations if the UK's political class and public change their minds.

### **Conclusion: a modest proposal or a focal point for resolution**

One reader of an early draft of this argument, Dr Julia Lynch, compared this text to Jonathan Swift's *A Modest Proposal*.<sup>17</sup> Usually such a comparison would tickle both my Irish and authorial pride, but the prose here is not suffused with satirical sarcasm, and the function of the argument is not to expose the Ukeiteers to ridicule—since some of their best-known leaders achieve self-ridicule entirely unaided, that goal would be redundant. Rather, the argument

is to provide a focal point for constitutional salvage—to facilitate those constituent units of the UK which voted to remain in the European Union in having their wishes and rights respected. It is intended to remind the Ukeiteers that it will be they who try to force Scotland and Northern Ireland to leave the EU against their will, when there is no constitutional necessity to do so. It is they who will break a treaty with Ireland. It is they who are on the verge of removing all merit to the idea that the UK is a multinational state and replacing it with palpable evidence that it is an English state, one that is about to engage in both perfidious and careless conduct. The Ukeiteers need to hear and digest one key lesson from the political science of multinational states. Contrary to legend, such states are usually not destroyed by secessionists alone. Rather, the key trigger that leads to their break-up is the unilateral adjustment of the terms of the union by the centre, without the consent of its multinational components.<sup>18</sup> That is the path upon which a Conservative government with a parliamentary mandate confined to England, and a referendum mandate confined to England and Wales, is now embarked. Before it is too late, it should be encouraged to pause and rethink its position.

An application for judicial review is being heard in Northern Ireland's High Court as I write, taken by nine persons or organisations, including members of the Northern Ireland Assembly from the Green party, the SDLP, Sinn Féin and the Alliance party; the former leader of the Progressive Unionist party; an ex-Equality Commissioner and disability rights activist; and the Committee on the Administration of Justice and the Human Rights Consortium. Their arguments seem to include the following representation: the government's claim that it can trigger Article 50 of the TEU under the royal prerogative does not apply in the case of Northern Ireland, where it has been displaced by the Northern Ireland Act 1998 and other legislation that has to be read under the provisions of the Good Friday Agreement of 1998 and the British–Irish Agreement of 1999, including provisions which delegate to the North–South Ministerial Council powers which are normally part of the exclusive powers of the

Crown. Therefore, the petitioners reason, no notice can be given by the Prime Minister alone to engage Article 50 unless there has been legislation by the Westminster Parliament. Such legislation, in turn, can only commence provided that the government seeks (and obtains) a Legislative Consent Motion from the Northern Ireland Assembly, as is now conventionally required of legislation that affects the devolved governments. Supplementary arguments include the failure of the Northern Ireland Secretary to make an impact assessment on human rights protections that are likely to be affected by leaving the EU—Northern Ireland, by virtue of the Good Friday Agreement, has distinct European-related rights provisions. We shall see whether these arguments prevail in court over the UK government’s insistence that the advisory referendum is allegedly binding on the Crown (and Parliament); that the Crown prerogative remains intact in all matters affecting withdrawal from the EU; that the governments, parliaments and assemblies of the devolved institutions of the Union can have no legislative say over the strategic content of UKexit—in short, that the Ministers of the Crown are exclusively entitled to represent the UK in taking the entire polity out of the EU. We shall see whether the UK government meets its obligations to apply its own constitution in its attempted exit from the EU, or whether it will be obliged to do so by its courts or EU courts. The manner of its going, if it goes, will be telling. It will let us know for certain whether the UK is just an English nation-state, and whether it is on course to lose its Dalriada appendages as it once allegedly won its empire, in a fit of absence of mind.

## Notes

- 1 Quite coincidentally, Westminster’s parliamentary boundary commissioners subsequently published proposals to create a Dalriada constituency out of what had once been Ian Paisley Senior’s North Antrim constituency: <https://www.boundarycommission.org.uk/2018-review> (accessed 7 September 2016).
- 2 Prime Minister’s speech, Conservative party conference, 2 October 2016.
- 3 ‘Teresa May to trigger Article 50 EU exit clause “by end of March”’, *Financial Times*, 2 October 2016.
- 4 The European Union Referendum Act of 2015 was silent regarding the legal consequences of a vote to leave the EU, and did not bind the UK Parliament.
- 5 See, among others, B. O’Leary, ‘The nature of the agreement’, *Fordham Journal of International Law*, vol. 22, no. 4, 1999, pp. 1628–67; J. McGarry and B. O’Leary, *The Northern Ireland Conflict: Consociational Engagements*, Oxford, Oxford University Press, 2004.
- 6 The referendum register excluded UK citizens living elsewhere in the EU from voting in the referendum, even though they should have been able to in accordance with their EU rights.
- 7 The Dalriada Document takes no view on the future status of Gibraltar, though its author is sympathetic to the wishes of its people to remain within the European Union. The focus here is on the compromises necessary to preserve the UK as a multinational and democratic state. In consequence, Gibraltar is discussed here largely in passing—no exclusionary intent should be read into this fact. One resolution would be to have Gibraltar represented by one MEP.
- 8 How Article 50 will apply if invoked is uncharted territory. There may be no impediment in the text of this Article to a member state changing its mind, having embarked upon the route to exit. After all, what it notifies to the European Council is its ‘intention’ to withdraw before the expiry of the two-year period or the entry into force of the divorce agreement. What seems likeliest, if it did change its mind, is that the UK would have to give notice of its withdrawal from the process begun under Article 50, which would then require the unanimous consent of the European Council.
- 9 Article 355(2) of the Treaty on the Functioning of the European Union provides that ‘special arrangements for association’ shall apply to a list of overseas countries and territories specified in an annex, and states in the same place that the ‘Treaties shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.’
- 10 Article 355(5)(c) of the Treaty on the Functioning of the European Union specifies: ‘the Treaties shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.’

- 11 Article 355(5) of the Treaty on the Functioning of the European Union specifies that, notwithstanding Article 52 of the Treaty on European Union and paragraphs 1 to 4 of Article 355, 'the Treaties shall not apply to the Faroe Islands'.
- 12 Greenland has a comprehensive partnership with the EU, complementary to the Overseas Countries and Territories arrangements under the Overseas Association Decision. It is based on a Council decision on relations between the European Community on the one hand, and Greenland and the Kingdom of Denmark on the other, and the Fisheries Partnership Agreement between the European Community, the Government of Denmark and the Home Rule Government of Greenland.
- 13 To avoid deadlock between the Northern Ireland First and Deputy First Ministers, they could agree to alternate in nominating a Commissioner from Northern Ireland. The same would apply for nominations to the Court of Justice. Or they could draw lots.
- 14 Article 16(2) of the TEU refers to a 'representative ... at ministerial level', allowing, for example, the German Länder governments to take turns to sit in the Council dealing with, say, cultural matters.
- 15 Regulations No 492/2011 and Directives 2004/38/EC and 2014/54/E.
- 16 Prime Minister's speech, Conservative party conference, 2 October 2016; if upheld this negotiating position puts paid to the possibility that May would put the UK in the EEA to minimise damage to Scotland, Northern Ireland and Ireland. See B. O'Leary, 'Letter from America: what may not happen in UKexit', *Intereconomics: Review of European Economic Policy*, vol. 16, no. 4, 2016, pp. 243–4.
- 17 J. Swift, *A Modest Proposal for Preventing the Children of Poor People From Being a Burthen to Their Parents or Country, and for Making Them Beneficial to the Publick* (1729).
- 18 J. McGarry and B. O'Leary, 'Must plurinational federations fail?' *Ethnopolitics*, vol. 8, no. 1, 2009, pp. 5–26.