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# **It Was Not Meant to Be this Way: An Unfortunate Case of Anglo-Saxon Parochialism?<sup>1</sup>**

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## ***Introduction***

I wrote the first draft of this article at the end of August 2016. The United Kingdom's advisory referendum on European Union (EU) membership was only two months' past. In those two months, the UK replaced a Prime Minister, our main opposition party entered into a full scale internal conflict, and a Summer Olympics was completed with great success for Team GB.<sup>2</sup> Returning to revise this article in December 2016, just before Christmas, the referendum and its aftermath has been overshadowed by the election of Donald Trump as President of the United States of America.<sup>3</sup>

There has been much discussion of whether the forces responsible for 'Brexit' and the forces responsible for the election of Trump are related, or interlinked. Just as 'only' 46% of the vote went to President-Elect Trump, 'only' 52% of the vote in the referendum voted 'Leave'. Whilst England and Wales voted to Leave, Scotland, Northern Ireland and a number of large, multicultural cities, including Liverpool, Newcastle, Manchester, Bristol, Brighton and London, voted by large margins to 'Remain'. Many of the reasons behind these voting patterns, especially the differences between the vote in Scotland and Northern Ireland on the one hand, and Wales and England on the other, are still being analysed by psephologists (Curtice 2016).

As well as the close nature of the votes both in the USA and the UK, there has been discussion and growing concern as to whether the forces of Brexit and Trump are related to

forces which may lead to the dissolution of the EU itself in a tide of anti-establishment feeling. The establishment are nervously casting their eyes towards the outcome of the French and German elections, to be held in 2017.

In the six months since the referendum result, the uncertainty over what Brexit will be has remained. Theresa May, the Prime Minister who succeeded David Cameron after he resigned after losing the referendum, has declared that Article 50 of the Treaty of the European Union will be invoked by the end of March 2017. This ‘sets in motion’ a two-year divorce period, during which the terms of the UK’s leaving the EU will be negotiated and determined. However, there is currently a conflict in the UK courts as to whether it is Parliament, or Government, that can invoke Article 50,<sup>4</sup> as well as a lack of detail as to the UK’s priorities and negotiating strategies during the Article 50 process. This is quite apart from the uncertainty surrounding what the long-term future holds for both the UK and the European Union.

It was not meant to be this way. After the fall of the Berlin Wall and the dissolution of the Soviet Union, the future looked very bright for the continent of Europe, and for the institution which became the European Union (Yurchak 2006).<sup>5</sup> Free markets and democracy had won. The threat of global nuclear war had abated, and countries around the world looked forward to the peace dividend which they would benefit from. Twenty-five years later, and the European Union could be viewed by a disinterested observer as a resounding success. Ex-Communist countries have been integrated into the biggest customs union and common market on the planet.<sup>6</sup> Democracy dominates the continent of Europe as a system of government, and the Schengen agreement had removed internal borders from much of continental Europe. A war in Europe has never seemed so far away. And yet. And yet.

What does the UK’s vote to leave represent? Like many others, my own reaction to the referendum result was a deep concern and confusion as to what exactly it represented, and its

consequences (Green et al 2016). Why is it that the news media and politicians across the continent are talking about a crisis for the EU, and even whispering about the beginning of the end of the EU if no reforms to that organisation are made? (Benson and Shore 2012; Shore 2011) Why did the UK's vote fracture between Scotland and England, the cities and the rural areas? What role did immigration play in the vote to leave? How does this relate to perceived anti-establishment movements in the United States, Italy, France, Germany and other countries? How could the UK do this? An exercise in direct democracy does not provide any answers (Glencross 2015). These questions will generate millions of words of print (and scores of doctoral theses) in years to come.

This piece serves as my personal reflection as to whether, in fact, there were any 'ideals' or bonds of solidarity which brought the (currently) 28 Member States together in the first place, or whether these bonds were far more tenuous than at first appreciated, especially when seen from this side of the English Channel. What follows is my attempt to add my own commentary to what has been (even including Donald Trump's election) the most momentous event of my lifetime.

### ***The United Kingdom and Europe – Myths and Exceptionalism***

The UK's relationship with the European Union has always been complex, and broadly based on a form of cost-benefit analysis. The UK is a country which, in many ways, is still coming to terms with the loss of its Empire, its influence and its power during the twentieth century. Within the UK's response to the referendum result (not just the official response from the UK Government and Government Ministers, but by a large swathe of the population), are statements and points of view which have (knowingly or not) invoked foundational myths and origin stories regarding the UK, British and English identity. Perhaps the most well-known and

famous example of this was the Leave Campaign's slogan: "Take Back Control" (Vote Leave 2016). The Leave Campaign viewed the UK as being outvoted and overruled by unelected bureaucrats from the EU which has led to the UK's Parliament not having control over the laws which applied to the country and not having control over the borders and flow of migrants into the UK.

At the crux of the Leave Campaign's argument was a view that by leaving the EU, the UK would save money, regain control of its own borders, and become a beacon of free trade, able to sign agreements without being encumbered by the EU. Broadly speaking, it invoked a form of British exceptionalism. Brexit has allowed the most optimistic voices to claim that the EU has imposed change onto the UK without its consent, and is even 'holding back' the UK from being the master of its own destiny (and success) (Worth 2017). This view of Brexit harks back to a time where the UK did not need any allies and trading blocks to remain a successful, world-leading State. Effectively, it refers back to a time (and implicitly argues that it can be recreated) when the UK was in control of the largest common market the world had seen, with free movement of capital, goods, services and people throughout its area – the British Empire (Ferguson 2004).

Tied up with the history of the UK, and before it Great Britain, has been a curious approach to its own identity, which in turn has been inextricable from the history of its imperial past. The polity of the UK is actually four constituent nations, with separate histories, cultures, languages, and traditions. However, due to England's dominant position in the UK, it is often difficult to distinguish English culture and tradition from the culture and traditions of the UK as a whole (Tombs 2015).

If the reader will allow me to slip into hyperbole: there exists a train of opinion which sees the United Kingdom as a nation which has had an almost unique history amongst modern

nation states, and a history which indicates that it is separate from 'Europe' (Spiering 2015: 20-29). It never defined itself –what it means to be 'British' – through an independence movement or rebellion. Unlike other States, the UK has not experienced wars on its soil in the same way as its European neighbours; being an island nation, it has sent troops to Europe but not been conquered by troops from Europe for nearly a thousand years. Nor has it been swept up in Revolution or civil war, like many countries around the world. Still with a monarchy which can trace its ancestry back over a thousand years, it stood apart from France, Germany and others when they experienced their own revolutions which led to new constitutions, new ideas, new movements and national spirits to be born.

This exceptionalism has influenced politicians too. Indeed, recent Prime Ministers have tried to articulate the notion of 'Britishness' by equating it to nebulous concepts such as 'liberty', 'fairness' and 'civic duty' (Brown 2007). Even Heads of Government were not immune to emphasising the exceptional nature of the polity (Atkins 2016). David Cameron made clear that Britain 'gave so much of the world the way of life that they hold so dear'— notably parliamentary democracy, the rule of law and a free press (Cameron 2014).

Britain has viewed itself as the coloniser, never the colonised (Thompson 2003).<sup>7</sup> This is exemplified through the nature of the British Empire. British subjecthood automatically applied to anyone who was born in the dominions and allegiance of the British Crown.<sup>8</sup> British laws automatically extended to colonised territories. The UK's first mass immigration law was only passed in 1947, and this law was not passed to restrict immigration, but rather to give British citizenship to 200,000 Polish soldiers.<sup>9</sup> In 1948, the UK Parliament passed the British Nationality Act, which created the legal status of 'Citizen of the United Kingdom and Colonies'.<sup>10</sup> There was, therefore, complete free movement of persons throughout the Empire (in law, if not in practice). It is an oft overlooked fact that the waves of 'post-War immigration'

to the UK involved British citizens with British passports moving to Britain.<sup>11</sup> The idea of a British identity was never structured around an ethnic or national identity. It operated rather more like citizenship in the Roman Empire, except without ever really having a core conceptualisation. Tradition and history therefore gains even more importance for the UK. Without a founding event or historical epoch, all the nation has is its very lengthy existence to define itself by.

Many of these narratives and histories and stories about the nature of Britain and the UK are skewed and selective (and, in many respects, plain wrong), but it is important not to underestimate the power of these narratives in the British psyche. This allows events to be ‘explained away’ to support the narrative of exceptionalism and difference from our European neighbours. The Revolution of 1688 is conveniently explained away (we invited a new King to take over!), invasions are ignored (including the Dutch and German soldiers who invaded with William III in 1688), and civil wars are denied (euphemistically described as ‘Troubles’ when they exist in Northern Ireland). Even more importantly, this narrative could be seen as not even being ‘British’. The Welsh, Scots and Irish nations each have their own experiences of subjugation under the English Crown, either through abolition (Wales), occupation (Ireland) or economic union (Scotland). In this sense, the dominant ‘British’ narrative could be argued to be an ‘English’ one.

To be slightly crueller, it is not too unfair to state that the English are one of the few peoples never to face up to what it means to be ‘English’. Always defining themselves through being the coloniser over an Empire that the Sun never set on, all of a sudden the English and British have had to come to terms with their new status in the family of nations. No longer at the head of an Empire with free trade and free movement of goods and peoples at its heart, the

UK had to accept a less than central role in another free market, one which it could not run by itself.

### ***English, or British Superiority***

The title of this commentary reflects my own view of the UK's relationship to 'Europe', both in reality and in ideology. It is inspired from a critical description of A V Dicey's account of the rule of law (Skhlar 1998: 26),<sup>12</sup> an account which has dominated 'Anglo-American' approaches to law and justice for well over a century.<sup>13</sup> This is a view of Europe which sees Britain as related to, but separate from the family of nations which generally are classified under that vowel-heavy six-letter word. It is also a view of Europe which, in my view, is coloured by the UK's own unique history – one which was always (literally) on the boundary of the tumults and internecine conflicts of the continent. Whilst it is correct that there were underlying causes of the Leave vote, in my view these catalysts cannot be seen as separate from an underlying view of 'Europe' pervasive on these shores.

A similar title to the one I have used was used by David Dyzenhaus in 2005 to refer to a judgment delivered by a UK House of Lords judge, Lord Hoffmann, in the case of *A and others*, more commonly known as the 'Belmarsh Detainees' case (*A and others v Secretary of State for the Home Department* [2005] 2 WLR 87 (HL)). Lord Hoffmann's judgment is interesting to me, not least for illustrating a certain point of view of 'Europe' (and in this case 'European law') which I feel has been reflected in many of the comments and approaches of the Leave campaign both before and after the June referendum.

The details of *A* can be succinctly stated. After the terrorist attacks on US in 2001, the Labour Government of the day passed a statute allowing for foreign terrorist suspects to be



detained without charge or trial. This detention was challenged through the courts. The lawyers for the detainees, knowing that courts had upheld similar measures as being valid under the law of England during World War Two, instead based their challenge on the European Convention of Human Rights (ECHR). In declaring that the detention without trial of suspected foreign terrorists was unlawful, Lord Hoffman asserted that there was no state of emergency existing which meant that the government lacked the justification to detain anyone without trial or charge. He also wrote the lines picked up by the news media, declaring that: “The real threat to the life of the nation ... comes not from terrorism but from laws such as these” (A, para. 97). Lord Hoffmann clearly declared that any power of indefinite detention “is not compatible with [the UK’s] constitution” (A, para. 97).

What Lord Hoffmann failed to mention to justify his reasoning (which all the other judges in the case did), was the Human Rights Act 1998, through which the UK courts can directly apply the rights protected by the ECHR. Instead, he felt that he did not need to rely upon European Law; the English common law (with all its history and wisdom gained through the centuries) provided all the answers required. However, this reliance on the ‘virtues of Albion’ remained problematic. As David Dyzenhaus noted, Lord Hoffmann’s argument rested on the proposition that detention without charge was unlawful because the UK government had not shown that there was a state of emergency (Dyzenhaus 2005: 674). Therefore, if the government could have rationally shown that a state of emergency had existed, then the judiciary should defer to the government and executive and not stand in the way of their decision (A, para. 97). In contrast, the other judges all agreed that there *was* a state of emergency, but even conceding this made clear that the ECHR placed limits on governmental action, which the government had exceeded. In short, it can be said that Lord Hoffmann, through an unnecessary reification of the virtues of English law, had in fact set the stage for larger problems down the line. Thankfully, his was a minority judgment in the case.

It may appear strange to invoke in a commentary on the 'Brexit' decision and its relation to the fall of the Soviet Union with a decade old human rights case, but I think that Lord Hoffmann's judgment casts light upon a wider view of the merits (or otherwise) of 'Europe' prevalent in the UK. Lord Hoffmann's approach to favour the English common law over and above any European alternative (and the burden which this places the English lawyer under) is reflected in the 19<sup>th</sup> century jurist (and cousin of Dicey and uncle of Virginia Woolf) James Fitzjames Stephen's view that:

Our law is in fact the sum and substance of what we have to teach them. It is, so to speak, the gospel of the English, and it is a compulsory gospel which admits of no dissent and no disobedience (Stephen in Stokes 1959: 302).

Through the Empire, the laws of the UK would civilise the world and ensure that other peoples were educated and brought into the light. Nor is this opinion of English and British supremacy limited to the law. In the political sphere, the self-evident pre-eminence of 'Albion' was announced by Margaret Thatcher in 1999:

My friends, we are quite the best country in Europe. I've been told I have to be careful about what I say and I don't like it. In my lifetime all our problems have come from mainland Europe and all the solutions have come from the English-speaking nations across the world (Thatcher 1999).

Such statements cast doubt on the narratives of the EU which place a motive shared by all Member States at its heart. It is questionable, at the very least, as to whether this motive was ever shared by the UK. But the history of the UK's accession also points to deep suspicions which came to the fore in the Summer of 2016, and will doubtless play themselves out over the coming months, years and decades.

### *The Accession to the Treaty of Rome and the UK's relationship to the EU*

The UK's perceived hostility towards 'Europe' was reflected in its original attitude to the European Economic Community (EEC) back in the 1950's. The UK was not part of the original Treaty of Rome, and did not send a minister to the preliminary summits and discussions which led to the Treaty's formulation. Instead, Russell Bretherton, an Under-Secretary from the Department of Trade, attended.

Jean-François Deniau, a French statesman present at the negotiations, recounted how Bretherton had spent many months sitting through the proposals of which the government of Harold Macmillan of the time were sceptical. From my point of view, it is most interesting that the UK's scepticism was not concentrated upon the notion of the free movement of persons, contained in the Treaty of Rome.<sup>14</sup> Indeed, having overseen an Empire which put this principle at its heart, the UK Government was not concerned about this. Rather, the concerns focused upon the centralisation of power and a shared economic direction for the continent. Deniau noted that finally, one day Bretherton had had enough, and rose to deliver a speech:

Messieurs, I have followed your work with interest, and sympathetically. I have to tell you that the future Treaty which you are discussing a) has no chance of being agreed; b) if it were agreed, it would have no chance of being ratified; c) if it were ratified, it would have no chance of being applied. And please note that, if it were applied, it would be totally unacceptable to Britain. You speak of agriculture, which we don't like, of power over customs, which we take exception to, and of institutions, which horrifies us. Monsieur le president, messieurs, au revoir et bonne chance (Maclay 1999; Deniau 1991).

Whether Deniau's account is accurate is disputed; Bretherton may never have uttered those words. Yet it was true that British officials were concerned about the UK joining this economic community. Bretherton made this clear in an official communique:

We have, in fact, the power to guide the conclusions of this conference in almost any direction we like, but beyond a certain point we cannot exercise that power without ourselves becoming, in some measure, responsible for the results.<sup>15</sup>

The suspicion of centralised authorities in Europe was a main driver behind the UK's non-participation in the Community for over a decade and a half. In part because of this suspicion, the UK only joined the EEC in 1973, alongside Ireland. This was in contrast to the UK's other post-war multilateralism – the UK was (and still is) a permanent member of the United Nations Security Council, a founding member of NATO, and it was the UK Government which helped to draft the European Convention on Human Rights. Following Fitzjames Stephen's lead, the UK was happy to bring the rule of law and human rights to other European countries; in line with Thatcher's view, the UK was happy to stand shoulder to shoulder with the USA and help defend Europe from the threat of communism and the Soviet Union. What the UK was not so happy doing was pooling aspects of sovereignty through the Common Market, moving decisions from Westminster to Brussels (Glencross 2016: 7-20).

Yet the UK *was* a member of the Common Market, and remained a member through the 1980's when the EEC expanded, with the former dictatorships of Spain, Portugal and Greece joining. With an expanding Europe, the EEC made moves to reduce tariff barriers and committed to creating a 'single market' comprising of free movement of goods, capital, services and (most importantly) people by 1992. The UK played its part in passing the Single European Act when its Prime Minister, one Margaret Thatcher, signed on behalf of the country in 1986.

Despite her ambivalence towards 'Europe', she was a keen supporter of the single market and its economic benefits.

In fact, it was Thatcher as Prime Minister who championed the expansion of the EEC. In 1988, Thatcher delivered a speech in Bruges to the College of Europe. In the speech, Thatcher laid bare the British relationship to 'Europe' which underpinned the referendum result this June and will shape the exit negotiations in years to come. Europe, Thatcher argued, "is not the creation of the Treaty of Rome" (Thatcher 1988). Whilst acknowledging the UK's debt to European culture, which 'shaped the nation', Thatcher made clear that the EEC should be built through the "willing and active collaboration between independent sovereign states" (Thatcher 1988). This was deliberate. There existed, from the mid-1980's onwards, a current of 'Euroscepticism' in British politics which was a product of British exceptionalism. Both the Conservative Party and the Labour Party manifested, co-opted and encouraged this Euroscepticism, blaming 'Europe' for political gain. This was amplified by the British Press, who made clear that they regarded the British and Britons as distinct from Europe and the Europeans (Spiering 2004). To this end, even the Eurosceptics in the Conservative Party in the 1980's and 1990's wished for a 'wider not deeper Europe'. This is not to say that UK politics was 'pro-Europe'. It was assumed that by expanding eastwards, the EEC would become so large that it would be impossible to pursue a goal of political union. It was

Alongside this, many British politicians felt that integrating ex-Soviet and Iron Curtain states into the single market would aid the democratising process in these countries. Thatcher was one of them. In the Bruges speech, she noted that the EEC should "never forget that east of the Iron Curtain, people who once enjoyed a full share of European culture, freedom and identity have been cut off from their roots. We shall always look on Warsaw, Prague and

Budapest as great European cities” (Thatcher 1988). In 2002, Conservative MEP Roger Helmer (who later defected to UKIP) stated that:

Tory policy on enlargement is clear. We are in favour of it, for three reasons. First, we owe a moral debt to the countries of central and eastern Europe, which were allowed to fall under the pall of communism after the second world war. Second, by entrenching democracy and the rule of law in eastern Europe, we ensure stability and security for the future. Third, an extra hundred million people in our single market may be a short-term liability, but long term will contribute to growth and prosperity (Helm 2013).

The contours of the British political debate around Europe – the preeminent position the UK placed itself in with relation to the rest of the continent, its suspicion of centralised powers in the EEC and EU, and its desire to embrace the single market through expanding EU membership, and a cynical use of Euroscepticism by parties on the left and right of British politics to gain public support and sympathy – shaped not just the EU referendum debate but all debates around the EU for the past decade. What proved to be the catalyst for the vote to Leave were two events – the 2008 global recession and market crash, and the previous Labour Government’s approach to the eastern expansion of the EU.

### ***Before the Fall...***

In 2004, ten countries of the former Soviet Union and Iron Curtain joined the EU. It could be said that this act was the final victory of the capitalist West in the Cold War. Not only had the Soviet Union dissolved, but an economic boom had occurred after the ‘end of history’ in the ‘roaring nineties’ (Stiglitz 2004a; Stiglitz 2004b). Stock markets were booming, free trade and globalisation were the orders of the day, and there was seemingly no end to the bull market.

Then UK Chancellor of the Exchequer Gordon Brown declared in 2007 that there would be no return to a “boom and bust” economy of the past (HC Deb 21 Mar 2007, vol 458, col 815). The gains from eastern expansion, and access to another 100 million consumers, were clear even a decade prior to accession (Baldwin 1995: 475). Nevertheless, there were dangers. Even in 1995, one academic noted that “serious political or economic turmoil in the East could lead to mass migrations and harm the confidence of investors throughout Europe” (Baldwin 1995: 475).

The mass migration occurred, but not because of any serious political or economic turmoil. Unlike France and Germany, who took advantage of transitional restrictions on free movement of persons when the 2004 accession occurred, the UK government relaxed immigration controls to these new EU migrants. Much like it had with its Empire after World War Two, the UK decided to reap the economic benefits of free movement of persons. This was an economic decision, in line with successive UK Governments approach to Europe – namely, in support of the single market, but not in favour of political union:

With an expanded European Union there is an accessible and mobile workforce already contributing to our growing economy, closing many gaps experienced by employers. In a changing environment where our European commitments provide many opportunities for the UK to benefit from this new source of labour ... [o]ur starting point is that employers should look first to recruit from the UK and the expanded EU before recruiting migrants from outside the EU (UK Home Office 2006).

The peoples of Eastern Europe were thus to be used as a source of cheap labour to bolster the booming UK economy (much like the 200,000 Polish soldiers had been in 1947). And they did, even before the eastwards expansion. Between 1995 and 2015, the number of immigrants from other EU countries living in the UK tripled from 0.9 million to 3.3 million, with a third living in London. The share of EU nationals grew from 1.5% to 5.3% of the total population and from

1.8% to 6.3% of the working age population (Wadsworth et al 2016). Yet the background to this boom was misleading. Not all individuals were benefitting from this strong economy. What is more, this inequality had not arisen by accident.

This economic boom which the UK was experiencing had its roots in the economic policies of the 1970s and 1980s. These policies had led to the unfettered creation of debt, high real rates of interest and international imbalances in exchange rates and trade. This was accompanied by the privatization of state assets, an increased focus on ‘flexibility’ in the labour market (a euphemism for a reduction in workers’ rights) and real wage repression (Pettifor 2017: 127). From the 1970s onwards, the Bank of England made a series of changes which benefitted the interests of the financial markets at the expense of industry and manufacturing, and the secure jobs which existed in those areas (Pettifor 2017: 129). As Aeron Davis and Catherine Walsh explain:

1979 and 1980 brought the release of exchange and credit controls and thus initiated a new credit boom ... although corporation tax was cut for all businesses, this was paid for specifically by removing capital investment allowances for machinery and plants—measures which primarily hit manufacturing. There were steady value-added tax (VAT) rates rises on goods and services, but financial and insurance services were made VAT-exempt. This doubly disadvantaged industry next to finance as the former made much greater use of real world goods and services than the latter.

The result of these policies was stark:

From 1979 to 1989, investment in financial services grew 320.3 per cent next to investment in manufacturing, which rose only 12.8 per cent. Until the 1970s, UK bank assets had been equal to roughly half the value of UK GDP for a century. Following changes, by the mid-2000s, they had risen to five times the value of GDP ... From 1997



to 2013, the UK's debt rose from £34 billion in 1997 to £1.3 trillion, or 88 per cent of GDP in 2013. By ... 2007–8, the UK's financial sector relative to its economy was bigger than any other G7 nation. In contrast, UK industry has suffered a faster decline than all its economic rivals in that same period. In 1970, UK manufacturing accounted for 30 per cent of GDP, 16.3 per cent of total world exports and had trade surpluses of 4–6 per cent annually. Furthermore, 35 per cent of UK employment was in this sector. By 2010, 13 per cent of GDP and 10 per cent of total employment was in manufacturing, and the UK was running a trade deficit in this sector of 2–4 per cent (Davis and Walsh 2016: 667).

This focus on finance over industry led to rising inequality. Jobs were lost in the manufacturing sector, and job opportunities boomed in the service sector. Yet these new jobs were not secure. By 2016, 15% of the UK workforce were defined as 'self-employed'. This does not mean the UK is a nation of small businessmen. Much of this 'self-employed' work comprises of workers carrying out short-term, casual labour (Department for Business, Energy & Industrial Strategy 2016). A large swathe of the working population missed out on the benefits of the economic good times, which were directed towards the wealthiest part of society. In the UK whilst the richest 10% saw their incomes more than double from 1968 to 2008, with the most precipitous rises occurring after 1979, the poorest 10% saw their wages increase by only 20% over the same period, with no real terms increase from 2002 to 2008 (National Equality Panel 2010). As a result, the share of the top 1% of income earners increased from 6.7% in 1981 to 12.9% in 2011 (OECD 2015).

The dangers of this inequality was perhaps best explained by Thomas Piketty, who stated that:

When the rate of return on capital exceeds the rate of growth of output and income ... capitalism automatically generates arbitrary and unsustainable inequalities that radically undermine the meritocratic values on which democratic societies are based (Piketty 2014: 1).

In other words, capital (unearned wealth, exemplified by the house price explosion in the UK) was fast outstripping income, leading to huge increases in inequality. This was not an inevitable consequence. Rather, it was caused by political policies (policies which were not restricted to the UK, but were repeated across North America and Europe), lending evidence to Piketty's assertion that "[t]he history of the distribution of wealth has always been deeply political" (Piketty 2014: 20).

### ***...and the Fall itself...***

Then the roof caved in, and a perfect storm was unleashed. The 2008 financial crisis, as is still evident, badly affected the Eurozone. Long regarded with suspicion from these shores (Hay 2003), currency union was driven by politics, not economics, and as the first stage to the complete political union that the UK had long resisted (and in many quarters, feared) (MacDonald 2005; MacDonald 199; Shore 2000). There was a definite move by the EU, after the Maastricht Treaty, towards institutionalising monetary policy at the expense of its earlier social democratic approach to European unity (Shore and Abélès 2004; Beller and Wilson 2000).

The harsh approach taken by the EU against Spain, Ireland and Greece (amongst others), and the perceived overriding of expressions of outrage and dissent by EU citizens to ensure the single currency did not fracture, further increased criticism of the EU and its institutions (Ilieva

and Wilson 2011). Decisions were being made by an increasingly technocratic organisation with a democratic deficit that bound elected governments across the continent (Follesdal and Hix 2006). Such is this democratic deficit that it has led to former Soviet dissidents making unflattering comparisons with the Soviet Union (Belien 2006).

What the financial crisis led to in the UK was the election of a Conservative-Liberal Democrat Coalition Government who embarked upon a radical austerity regime. Made up of deep spending cuts in the main, without the Keynesian stimulus package demanded by many economists (Krugman 2015), the austerity measures were designed to reduce the UK's public accounts deficit. These measures have led to tepid growth, with public debt doubling since 2010 and the balance of payments running at record deficits. In addition, the austerity policies fell predominantly on the poorest in the UK – those who saw their wages increase so timidly during the boom, felt the pain the most during the bust (Office of National Statistics 2013). Economic stagnation, cuts to social security and public services, falling incomes, and rising unemployment combined to create a deeply damaging situation in which millions struggled to make ends meet (Haddad 2012). Conversely, the well off, those without children, those who did not receive state benefits, and those who most likely benefitted from the economic boom, did not feel the brunt of the cuts. Again Piketty is instructive:

[T]he dynamics of wealth distribution reveal powerful mechanisms pushing alternatively toward convergence and divergence ... there is no natural, spontaneous process to prevent destabilizing, inegalitarian forces from prevailing permanently (Piketty 2014: 21).

Despite the UK's economic recovery being worse than it needed to be through a self-inflicted wound, it remained in a (relatively) better position than the Eurozone. The result of this was an increase in net migration to the UK, especially from EU citizens, who were seeking and filling

jobs. This was driven by the Eurozone crisis – from 150,000 migrants a year from the EU in 2012 to over 250,000 a year in 2015 (Hawkins 2016).

In the background too remained the refugee crisis. Even though very few of those fleeing violence in the Middle East and North Africa reached the UK, images of thousands of refugees arriving in ‘Europe’ (it was almost always left ambiguous in the press), queuing at borders, climbing over fences and heading ever westwards became synonymous with the free movement of persons guaranteed by the EU Treaties. This was taken advantage of by the (now infamous) “Breaking Point” poster unveiled by the UKIP leader Nigel Farage a few weeks before the referendum. The perfect storm had thus been created – longstanding British suspicions about the EU and its centralizing tendencies, the fears about immigration, concerns about a lack of jobs and opportunities, disenfranchisement with the mainstream political parties, and a schism in the populace with the result laid bare.

Opinion polls published shortly after the vote appears to support the view that it was those ‘left behind’ in the periods of economic growth, who were also most affected by austerity, who cast the decisive votes in the referendum. Brexit voters are twice as likely to feel that their local area doesn’t get its fair share of Britain’s economic success, and that their local area has been neglected by politicians, and that government does not listen to their concerns (Wright and Case 2016). 58% of Leave voters felt that life in Britain today is worse than it was 30 years ago; 73% of Remain voters felt it is better. There was a clear correlation with education and social class – the better off and better educated the voter was, the likelier it was that they would vote Remain. By large majorities, voters who saw multiculturalism, feminism, the Green movement, globalization and immigration as forces for good voted to remain in the EU (which included larger numbers in Scotland than the rest of the UK); those who saw them as a force for ill voted by even larger majorities to leave.

Again, suspicion about the EU and a perceived democratic threat to the UK's traditions remained a strong influence. Nearly half (49%) of leave voters said the biggest single reason for wanting to leave the EU was "the principle that decisions about the UK should be taken in the UK". One third (33%) said the main reason was that leaving "offered the best chance for the UK to regain control over immigration and its own borders". Even among Remain voters, only 9% said the main reason for their vote was "a strong attachment to the EU and its shared history, culture and traditions" (Ashcroft 2016).

Despite the shock with which the Leave vote was received, especially by the markets, it was not particularly surprising given the context. Again, Piketty's words seem prescient:

The concrete, physical reality of inequality is visible to the naked eye and naturally inspires sharp but contradictory political judgments. Peasant and noble, worker and factory owner, waiter and banker: each has his or her own unique vantage point and sees important aspects of how other people live and what relations of power and domination exist between social groups, and these observations shape each person's judgment of what is and is not just (Piketty 2014: 2).

The history of inequality is shaped by the way economic, social and political actors view what is just and what is not, as well as by the relative power of those actors and the collective choices that result (Piketty 2014: 20).

So what now?

## ***Conclusion***

What is clear to me is the cognitive disconnect which exists between both sides in the debate, and also between the leading voices on each side and the very people who voted for Brexit. Since the result was announced there have been many ardent ‘Brexiters’ who have advocated leaving not just the EU but the single market as soon as possible so that Britain can forge trade deals with countries around the world and become (in the words of one) a “buccaneering offshore low-tax nation” (Hannan 2016). Lord Lawson (a former Chancellor) claimed that Brexit will allow Britain to negotiate new favourable trade deals and ensure the ones she has remain ‘unchanged’ (Gehring 2016). The spirit of Thatcher and Fitzjames Stephen remains strong. These pronouncements infer that the UK can ensure that free movement of persons will end, that the EU will accede to the UK’s requests for trade, and that the UK will become even more successful now it has thrown off the yoke of the EU.

Yet within the Brexit camp, there are the ‘soft Brexiters’ who argue for single market access, stating that this is crucial for the UK’s economy. Single market access of course means accepting free movement of persons. It is not yet clear which path the UK will travel down (Allen et al 2016). This is the case even after Theresa May signaled a desire to cut immigration as the top priority for the Government, even if this means jeopardizing the UK’s access to the single market (Walker 2016). Even then, what is good economically is not necessarily good politically. There is the very real prospect that the UK (and by extension its people) will not be given a good deal by the EU. If the UK can show that it can leave the EU and get a better deal outside of the Union, then what message will that send to the other Member States?

Just as loudly the ‘Remainers’ have made their objections. Parliament must get its say! This was only an advisory referendum – it is not binding! People were lied to – all the experts declared that this would be a disaster! (Worley 2016) True, it was galling to see the Justice Minister, Michael Gove, dismiss the warnings by economists and others in advance of the vote

with a proclamation that: “people in this country have had enough of experts” (Mance 2016). Yet is there not something more problematic with the notion that the People have made an egregious error, and that their decision should be ignored? True, the question was ambiguous. People had different reasons and motivations for voting to Leave. True, the vote was close – four points. But this is still around 1.4m votes. A four-point win in a US Presidential election would not be this contentious.<sup>16</sup> True, this issue was complex. The implications are enormous, spanning issues including international trade law, the World Trade Organisation, the status of EU law in the UK, the future of the UK constitution (unwritten as it is), and the future of the UK itself. You would have to have experts to guide your way through that minefield. But to come back to Piketty again: “Democracy will never be supplanted by a republic of experts – and that is a very good thing” (Piketty 2014: 2).

In *The Communist Manifesto*, Marx wrote that “A spectre is haunting Europe – the spectre of communism”. Today, perhaps it is correct to state that the spectre haunting Europe is the future of Europe itself. Income inequality, austerity and financial crises and the refugee crisis have led to the UK voting to leave the European project. The unique history of the UK, and its own unique take on the merits of itself and the demerits of ‘Europe’ have made it the first to leave the club. Yet across Europe, nationalist parties are surging in opinion polls, and anti-EU sentiment is growing. Perhaps the greatest lesson the fall of the Soviet Union can teach us is what happens when an ossified, out of touch, undemocratic bureaucratic regime runs into the demands of people to ‘take back control’.

Does this mean that the European Union will come to an end? No, I don’t think so. I voted to Remain, and am fearful of the future prospects for my own country. Yet for all the talk about Britain’s new place in the world, the future of EU reform, the future of trade deals, renegotiations, and the importance of finding the best possible solution to this situation, we

could end up missing the most important lesson of all. That what we should all do in this country, and across the EU, is speak to those millions of people who feel like they have been abandoned by this country, 'Europe', globalisation and austerity, and to hear their stories and what they have to say. Only then can we start to think about whether there are shared values and principles which could form the basis for a European politics of the future.



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<sup>1</sup> This commentary's title owes a debt to David Dyzenhaus, 'An Unfortunate Outburst of Anglo-Saxon Parochialism' (2005) 68(4) *Modern Law Review* 673-676.

<sup>2</sup> I mention the success at Rio 2016 not just because I lost many nights' sleep to watching athletics, cycling, hockey and taekwondo, but also because no one is quite sure whether this will be the last Olympics that the United Kingdom competes at, given the possibility for the polity to fracture over the coming years.

<sup>3</sup> Due to the vicissitudes of the Electoral College, Donald Trump won the electoral vote but lost the popular vote by over 2.5 million votes. No previous candidate has been elected whilst losing the popular vote by such a margin. Nor has any candidate without prior political or military experience been elected President. The next four years will be an interesting time to live through.

<sup>4</sup> The High Court case of *R (Miller) v The Secretary of State for Exiting the European Union* [2016] EWHC 2768 (Admin) ruled that Article 50 TEU could only be invoked after Parliamentary approval, and not by the Prime Minister or other Government Ministers. An appeal by the Government to the Supreme Court was heard in December 2016. The press coverage surrounding the cases was vitriolic and full of hyperbole – one newspaper decried the High Court judges as "Enemies of the People", which is quite an odd response to a ruling which gave ultimate power to start the exit process to the elected Parliament of the land.

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<sup>5</sup> A mention of the Soviet Union cannot go without mention of the fact that, for many Soviet citizens, the Union's dissolution came as an unexpected event without warning. It is yet to be seen whether the same unexpected dissolution will befall another Union.

<sup>6</sup> The distinction between the two – a customs union and a common or single market – appears to have confused a large swathe of the UK's MPs, and press and commentators, who often confuse and conflate the terms and concepts. It is yet to be seen what the UK's future relationship will be to both the customs union and the single market.

<sup>7</sup> The reader will have to forgive my (slight) descent into hyperbole with this claim. My point is to invoke an idea of 'exceptionalism' in current British (and English) identity, which defines itself in part through a view as never having been conquered or invaded, or having needed to be freed from the yoke of tyranny. Such a view is, very much, an exaggeration. The British Isles have been colonised successively by numerous peoples – the Romans, Anglo-Saxons, Vikings and Normans come to mind – and there have been a number of defining events throughout history which have forged a sense of identity without involving an occupation of the British Isles by foreign troops. The Battle of Britain and the Blitz, the Dunkirk Evacuation, the First Day of the Battle of the Somme, the Napoleonic Wars and Battle of Waterloo, the Suffragette Movement and trade unions movement come to mind in this regard.

<sup>8</sup> Again, showing the dominance of England within the British polity, this was derived from an English law passed in the reign of Edward III – *De natis ultra-mare* (Status of Children Born Abroad Act 1350 25 Edw III).

<sup>9</sup> Polish Resettlement Act 1947 c. 19.

<sup>10</sup> British Nationality Act 1948 c. 56, s.1(1).

<sup>11</sup> All of the passengers on board HMT *Empire Windrush*, which docked in Tilbury Docks in 1948, carried British passports and had full rights of entry to the UK.

<sup>12</sup> Albert Venn Dicey was a Professor of Law at the University of Oxford during the 19<sup>th</sup> Century. He is broadly seen as popularising the term 'the rule of law' and saw this as a foundational principle in the UK's constitution.

<sup>13</sup> By Anglo-American here I am referring to a term which is commonly used in legal circles (albeit a term without a settled or precise definition). It broadly refers to legal systems which have been based on, or strongly influenced by, the English common law (Scotland and Northern Ireland have separate legal systems, and they have not been as influential). Commonwealth countries, and the United States of America, have such legal systems. They have broadly similar characteristics – they are based (in whole or in part) on judicial decisions from courts, allow judges scope to interpret the laws made by legislatures, and are broadly based on an approach to liberty and freedom which Isaiah Berlin would have classed as 'negative liberty'.

<sup>14</sup> Article 45, Treaty on the Functioning of the European Union (ex 39 and 48).

<sup>15</sup> CAB 134/1044, R Bretherton (BT) to F F Turnbull (T), 4 August 1955.

<sup>16</sup> This sentence was written before the election of Donald Trump. I have decided to leave it unchanged, as it is even more relevant now I think.