Unity over Diversity? The Politics of Differentiated Integration after Brexit

Dr Benjamin Martill
School of Social and Political Science
University of Edinburgh
15a George Square
Edinburgh, EH8 9LD
benjamin.martill@ed.ac.uk

Forthcoming in the Journal of European Integration

Accepted 7th December 2020

Abstract

There is now a significant literature on the effects of Brexit for the differentiated forms of integration that have become an increasingly familiar feature of the EU’s political landscape. While the significance of British withdrawal for questions of differentiation is not difficult to establish, there is little agreement in the literature on whether Brexit will lead to a more or less differentiated EU, which aspects of withdrawal are most relevant, and how the specified causal mechanisms operate. This article takes stock of the debate, discussing four distinct causal pathways: (1) the removal of the UK’s opt-outs; (2) the lessons of the British experience; (3) Brexit as a catalyst for reform; and (4) the future UK-EU relationship. The article suggests a more starkly differentiated EU post-Brexit is likely precluded by the political context of disintegration, which downplays negative lessons, reinforces EU unity, and disincentives a ‘British model’ of external differentiation.

Acknowledgements

I would like to thank Iain Begg, Kevin Featherstone, Inga Runarsdottir and three anonymous reviewers for their helpful comments on the article. I am also grateful to Stifting Mercator for generously funding this research through the Dahrendorf Forum. All views contained herein (and any errors) are my own.

Keywords

Brexit; differentiated integration; European Union; opt-outs; United Kingdom.
Introduction

Reliance on differentiated forms of integration has increased in recent decades, to the point that differentiation has become a constitutive principle of the European Union’s (EU) legal and institutional architecture. Increased differentiation is a product of the gradual expansion of the EU’s competences and growing opposition to further European integration in some quarters of the Union, leading to demand for specific exemptions in key policy areas. But the decision of the United Kingdom (UK) to leave the Union in the June 2016 referendum has once again placed the spotlight on the role of differentiation. Brexit has brought about an existential crisis for the EU, removed the numerous opt-outs held by the UK, precipitated negotiations over the future UK-EU relationship, and offered lessons from the British experience of differentiation. And yet, precisely how Brexit will impact the level of future differentiation in the EU remains unclear. In spite of a surge of scholarly attention (e.g. Cardwell 2019; Chopin and Lequesne 2016; De Witte 2018; Leruth et al. 2019c; Schimmelfennig 2018), there is little agreement on whether Brexit will increase or decrease the level of differentiation in the EU, on what the relevant mechanisms linking British withdrawal and differentiation are, or on the causal direction in which each of these mechanisms is likely to push the Union.

This article aims to bring greater clarity to the debate by taking stock of the relevant factors linking Brexit and differentiation and assessing these in light of the available empirical evidence to date. Four distinct factors are discussed: (1) the removal of the UK’s opt-outs, (2) the lessons of Brexit, (3) Brexit as a catalyst for reform, and (4) the management of the future relationship. The discussion highlights a considerable diversity of interpretations between these different factors, but also among scholars over how each of these factors operate, adding to the confusion over how Brexit and differentiation are linked. In spite of divergent predictions, the
article claims that evidence from the Brexit process thus far suggests wholesale movement to a more differentiated Union is unlikely. This is largely due to the political consequences of the disintegration which Brexit entails, which has led the EU27 to downplay the lessons of Brexit which paint the integration process in a negative light, prioritise the unity of the EU27 above forms of divergence and differentiation, and avoid at all costs the establishment of a ‘British model’ of differentiation in the future relationship with the UK.

**Differentiation in European Integration**

Differentiation has become a more prominent facet of the integration process in recent decades, as member states have sought to exclude themselves from specific policy areas and as external actors have adopted elements of the EU *acquis* (Schimmelfennig et al. 2015, 765). The expansion of differentiation is partly the product of broader changes in EU politics, notably the rise of ‘post-functional’ opposition to integration among domestic publics (Hooghe and Marks 2009) and the breakdown of state-society relations at the national level (Bickerton et al. 2015, 710), both of which have served to constrain elites from pursuing further integration more so than previously. Opt-outs and forms of extra-EU collaboration have allowed member states and third countries to overcome specific objections to further integration, resulting in a more variegated Union with a “single organizational and member state core and a territorial extension that varies by function” (Schimmelfennig et al. 2015, 767).

Differentiation is complex and comes in a variety of different forms (e.g. Burk and Leuffen 2019, 1397; Holzinger and Schimmelfennig 2012; Stubb 1996, 283; Warleigh-Lack 2015, 876). Opt-outs represent one means through which existing members may voluntarily exclude
themselves from specific policy areas, or aspects of policy areas, which would otherwise prevent them from proceeding apace with other member states (e.g. Adler-Nissen 2014). Denmark, for instance, opts-out of the Euro, the Area of Freedom, Security and Justice (AFSJ) and the Common Security and Defence Policy (CSDP), while Poland has an opt-out from the Charter of Fundamental Rights (CFR), and Ireland opts-out of Schengen (Gstöhl and Frommelt 2017; Olsen 2011). Formal opt-outs are complemented by informal derogations which have gained broad acceptance in spite of their lack of substantive legal backing: Sweden’s ‘informal’ Euro opt-out and the long-term reticence of candidate countries such as Poland, Hungary and the Czech Republic to join the common currency are perhaps the best known examples (Schütze 2015, 809-810).

Extra-EU treaties between member states, such as the 2011 Fiscal Compact, the Prüm Convention and the Schengen Convention (since incorporated into EU law) represent another form of differentiation between existing members (Cardwell 2019, 1412; Fossum 2015, 804). Some recent EU initiatives, notably Permanent Structured Cooperation (PESCO) have also been designed on an explicitly differentiated basis, with membership limited to a common core of member states who wish to move forward in security and defence, and different member states participating in different PESCO projects (Howorth 2019; Svendsen and Adler-Nissen 2019). Moreover, region-specific arrangements, emerging out of the need to deal with historical political complexity, represent a further form of differentiation at the sub-national level. For example, the terms of Cypriot accession provide for the circulation of goods within the EU produced in the unrecognised (except by Turkey) ‘Turkish Republic of Northern Cyprus’ whilst simultaneously limiting the liabilities of the Government of Cyprus within the territory (Skoutaris 2008, 732, 744).
There is also an external aspect to differentiation, since non-members also participate in specific policy areas and incorporate elements of the *acquis* into their own domestic legal systems, overseen by a range of distinct institutional frameworks (e.g. Lavenex 2015). Norway participates in the single market and Schengen as a member of the European Economic Area (EEA), adopting over 75% of EU legislation in the process (Egeberg and Trondal 1999). The Swiss arrangement is similar, but has emerged out of a complex series of bilateral treaties, since Switzerland chose to reject EEA membership (Gstöl 2002). Neither country participates in the EU’s customs union, but Turkey, another non-EU member, maintains a distinct customs union with the EU (Aytuğ et al. 2017), while Ukraine incorporates part of the acquis into domestic law through its Association Agreement (Gstühl 2015). Beyond these specific examples, many third countries incorporate aspects of the EU *acquis* into their own national laws, for various reasons (e.g. Oberg 2020), although to label all such examples forms of differentiated integration per se is to stretch the concept a little too far.

Differentiation has developed because it is a politically expedient means of managing difference and expanding the reach of key policy areas outside the Union’s immediate membership (Chopin and Lequesne 2016, 534; Schimmelfennig 2018, 1158). Not only does differentiation allow integration to overcome specific obstacles, it can also incentivise the laggards to catch-up by demonstrating the benefits which accrue to members of the in-group (Leruth et al. 2019c, 1385). And formal exceptions can be bypassed in practice, allowing countries to accrue the political benefits without the practical difficulties (e.g. Adler-Nissen 2008; Wolff 2015, 134). And there are those who claim differentiation can allow for more efficient integration, since the straitjacketing effects of common rules can be diminished (Lord 2015, 783), diversity in national economic models adequately catered for (Bickerton 2019), and positive divisions-of-labour established (Howorth 2019). But differentiation has its critics.
too. It can lead to increasing complexity as distinct models proliferate, making day-to-day policymaking more difficult to manage (Cardwell 2019, 1412; Featherstone 2017, 5). And, insofar as it establishes ‘in’ and ‘out’ groups, differentiation can create political problems, including feelings of exclusion (Chopin and Lequesne 2016, 534-535) and, in cases of external differentiation, significant deficits in democratic accountability (Featherstone 2017, 4; Leruth et al. 2019c, 1386; Thompson 2017).

**Brexit and Differentiated Integration**

Unsurprisingly the British decision to leave the EU in the 23 June 2016 referendum (Brexit) has re-ignited the debate over the role of differentiation in European (dis)integration. The UK had been a champion at times of a more differentiated Union and had secured a sizeable number of opt-outs from various policy-areas over the years, and this naturally became a starting point for scholars in thinking about the link between Brexit and the level of differentiation in the future EU. Indeed, the literature on Brexit and differentiation has burgeoned since 2016 (e.g. Bickerton 2019; Cardwell 2019; Featherstone 2017; Leruth et al. 2019b; Martill and Sus 2018; Schimmelfennig 2018; Schmidt 2019; Svendsen 2019; Svendsen and Adler-Nissen 2019).

Three areas of debate are identifiable within existing scholarship. The first concerns whether Brexit will bring about more, or less, differentiation in the future EU. Several scholars have predicted a move towards a more differentiated Union, while carefully caveating their predictions to acknowledge high levels of uncertainty (e.g. Burk and Leuffen 2019; De Witte 2018; Schimmelfennig 2018). Other scholars have suggested it is more likely that differentiation goes out of favour after Brexit (e.g. Bickerton 2019). And some have predicted
a continuation of the status quo (e.g. Cardwell 2019) while others have claimed that the level of uncertainty is such that either of the above outcomes may come about (e.g. Chopin and Lequesne 2016; Leruth et al. 2019c; Riedel 2018; Svendsen 2019). Although it is clear that Brexit and differentiation are linked, there is no consensus on the literature on which way the causal arrow points and what the strength of any causal effect will be.

A second area of debate concerns the mechanisms through which Brexit is anticipated to affect differentiation, with scholarship pointing to a range of different aspects of Brexit with implications for differentiation. Some have suggested the removal of the UK’s existing set of opt-outs is the most relevant factor (e.g. Burk and Leuffen 2019; Cardwell 2019). Others have focused on the potential for EU reform brought about by the Brexit moment and the possibility for a more differentiated EU that results (e.g. De Witte 2018; Martill and Sus 2018). Still a number of authors have focused on the lessons of Brexit and what the British experience of differentiation suggests for the future viability of the principle (e.g. Bickerton 2019; Leruth et al. 2019c; Riedel 2018). And a number of works have examined the potential for the future UK-EU relationship to become an example of external differentiation (e.g. Murray and Brianson 2019; Schimmelfennig 2018).

Finally, a third area of debate has focused on how these specific mechanisms operate and what their implications are for differentiation post-Brexit. In some cases the question is one of extent. There is no agreement, for instance, on whether the withdrawal of the UK’s existing set of opt-outs will be transformative (Murray and Brianson 2019, 1431) or will result in nothing more than a continuation of the status quo (Cardwell 2019), nor is there agreement on whether external differentiation post-Brexit will represent a boost to existing models (Chopin and Lequesne 2016) or rather a new model of external differentiation (Leruth et al. 2019c; Murray
and Brianson 2019, 1431; Riedel 2018). In other instances the direction of the causal relationship itself is disputed. The lessons of Brexit, for example, have been associated both with the need for more differentiation (Bickerton 2019) as well as the idea that differentiation has been largely unsuccessful as a tool of integration (Bongardt and Torres 2020; Riedel 2018). And the direction of post-Brexit reform in the EU has variously been associated with an increase in harmonisation (Martill and Sus 2018) and with the potential for greater differentiation (Riedel 2018).

**Taking Stock of the Debate**

This article has two aims. The first is to offer a systematic exposition of the different arguments that have been offered linking Brexit to the level of differentiation in the future EU. The discussion focuses on four mechanisms which recur frequently in the literature: (1) the removal of the UK’s opt-outs; (2) the lessons from the British experience; (3) Brexit as a catalyst for EU reform; and (4) the management of the Brexit process. For each the article sets out the context for the specified mechanisms, examines the distinct positions that have emerged in the literature, considers the conceptual issues on which the debate hinges, and offers a brief empirical assessment of what the unfolding of the Brexit process can tell us about the validity of these arguments.

There are a number of reasons why it is helpful to take stock of the current literature on Brexit and differentiation. First, it is useful to set out the relevant scholarly accounts in one place in order to acknowledge the causal complexity characterising the relationship between Brexit and differentiation. Second, it is helpful to highlight areas of debate within the existing scholarship,
since the divergent outcomes inferred by scholars working on differentiation and Brexit speaks to the existence of underlying divisions that have not yet been teased out fully. While the existing literature is far from homogenous, the current treatment of diverse perspectives focuses on divergent future scenarios (e.g. Chopin and Lequesne 2016; Leruth et al. 2019a), rather than contending causal pathways.

The second aim of the article is to highlight a number of limitations to the future prospects of differentiation which emerge from the context of differentiated disintegration, defined by Schimmelfennig (2018, 1155) as the “process of unequal reduction in the level, scope, or membership of the EU”. Specifically, the article suggests that the context of withdrawal affects the prospects of differentiation in four respects: (1) It pushes pivotal member states into valuing the unity of the EU27 above other considerations; (2) it reinforces narratives which blame the Brexit vote on the UK’s lack of Europeanness; (3) it substantially lowers the bargaining power of the departing member states; and (4) it establishes significant incentives to avoid the creation of a bespoke model of association for the UK.

What is the value-add of highlighting the effects stemming from the context of disintegration? First, and empirically, by examining how the context of a departing member states impinges on the EU27’s priorities we can see why specific arguments made in support of further differentiation early-on in the Brexit process have not come about, including those predicting the embrace of divergence by the EU27, the learning of introspective lessons from Brexit, and the articulation of new forms of external differentiation. Second, the argument has theoretical implications, helping us to flesh out the politics of disintegration and providing grounds for distinguishing the distinct dynamics of differentiated integration and differentiated disintegration. Existing work on the topic has focused mainly on the implications of this
conceptual switch for the balance of power, rather than other (significant) aspects of the politics of withdrawal (e.g. Burk and Leuffen 2019; Leruth et al. 2019a, 1021; Oberg 2020, 171; Schimmelfennig 2018).

The next four sections discuss, in turn, each of the four factors most commonly linked to the question of the level of differentiation in the post-Brexit EU.

(1) Removal of the UK’s Opt-Outs

The most direct consequence of Brexit for differentiation is the removal of the sizable number of opt-outs obtained by the UK during successive rounds of treaty negotiations (Kroll and Leuffen 2016, 1312). As the price of British support for the Maastricht Treaty, the UK obtained formal opt-outs from monetary integration and the ‘Social Chapter’ (Fontana and Parsons 2015, 98), although the UK opted back in to the latter under New Labour in 1997 (Schimmelfennig 2018, 1158). During the negotiations over the Amsterdam Treaty the UK (and Ireland) secured opt-outs from the Schengen provisions which were incorporated into the EU acquis, since both countries maintained the Common Travel Area. And in the Lisbon negotiations the UK negotiated, along with Poland, an opt-out from the Charter of Fundamental Rights and its application in UK law. Moreover, prior to the entry into force of the Treaty, the UK announced a block opt-out from the provisions of the Area of Freedom, Security and Justice (AFSJ) - negotiated at the time of the Amsterdam Treaty - before subsequent opting back into a number of provisions.
While Brexit thus involves the withdrawal of a highly distinct actor, from the perspective of differentiation, the significance of this is disputed. For some the effect of British withdrawal will be less internal differentiation. Murray and Brianson (2019, 1431) claim that “when the UK leaves the EU, the latter will be shedding the state with the most opt-outs from EU policy”, predicting a shift towards external forms of differentiation post-Brexit. Others suggest the departure of the UK will change little in this regard. Cardwell, for example, acknowledges that the “UK’s departure removes the member state most ready to challenge some of the fundamentals of the legal order” but contends the most likely scenario will be “a continuation of the status quo, in which differentiation exists in various forms but as exceptions to the rule, rather than the rule itself” (2019, 1407). Chopin and Lequesne also claim that as long as the EU continues to set its sights on further integration in areas of core state competences, preventing a lowest-common-denominator approach will require some selectivity towards more recalcitrant member states, concluding that “the EU will not escape more differentiation in the future” (2016, 545).

The withdrawal of the UK’s existing opt-outs raises a number of conceptual questions. One is the significance of the number of existing opt-outs for the future of the practice itself. To the extent opt-outs become less prevalent, they may be seen as a less legitimate option, but this is not to say the withdrawal of the UK’s opt-outs will have any impact on demand for future exceptions. Another question concerns how representative the UK was as a proponent of differentiation. It may be argued variously that British withdrawal removes the main source of demand for opt-outs, or that it simply removes the most vocal proponent of an option which other member states have also sought to obtain on any number of occasions. And there are important questions about the specific role of the UK vis-à-vis other member states; specifically, whether the UK’s was in a more powerful position than other member states to
obtain opt-outs, and whether it was able to utilise its influence to promote opt-outs more
generally. If Brexit removes an effective and willing champion of differentiation, then the
effects may be felt beyond the removal of specific UK opt-outs.

It is difficult to assess at the present moment what the future demand for opt-outs will look
like. But it is not a stretch to suggest such demand will not disappear post-Brexit, since the UK
is far from the only member state with reservations about further integration (e.g. Cardwell
2019, 1407; Leruth et al. 2019c, 1388-1390). Whether these demands will be met depends on
calculations of relative bargaining power: The UK secured derogations owing to its clout, for
sure, but also its clear status quo preference (Kroll and Leuffen 2016, 1312; Schimmelfennig
2018, 1198). While those member states most hesitant about further integration will continue
to benefit from the blocking power accruing to status quo-oriented actors, member states which
have rather followed the UK in seeking specific opt-outs, but which remain broadly supportive
of further integration in other respects, may be less empowered with London outside the tent.
Demand for opt-outs also depends on the future direction of the EU itself. The greater the
demand for further integration in some quarters, the more likely it is that some member states
will request opt-outs from specific provisions. While it is early days yet, the example of PESCO
would suggest that the current preference (backed especially by Germany) for the greatest
possibly unity among the EU27 establishes de facto laggards among those who choose not to
take part (in this instance, Denmark and Malta). We might thus expect the removal of the UK’s
opt-outs post-Brexit to be less than transformative, given the likelihood of demand for future
opt-outs, although the outcome may not fully resemble the status quo, since more integrationist
member states seeking opt-outs can no-longer depend upon the UK example.
(2) The Lessons of Brexit

Another way in which Brexit informs debates on differentiation in the EU is through the example set by the UK’s possession of a number of opt-outs and the lessons that can be drawn from this. It is “not by chance”, Chopin and Lequesne (2016, 531) note, that differentiation was “one of the major issues of the UK renegotiation process”. Indeed, British Euroscepticism in the post-Maastricht period has often-times found expression in demands for a more flexible EU in which the UK would not find itself bound by overly restrictive common rules (Tournier-Sol 2015). Cameron’s renegotiation announcement stated explicitly that the UK “believe[s] in a flexible union of free member states who share treaties and institutions and pursue together the ideal of co-operation” (HM Government 2013). Cameron advocated renewed efforts to complete the single market in services alongside additional safeguards for non-Eurozone members, thus envisioning both a rolling back of previous UK treaty commitments to ‘ever closer union’ combined with further integration in areas where the EU was falling behind in competitiveness (Kroll and Leuffen 2016; Schimmelfennig 2018, 1165; Smith 2016, 333). The prime minister’s inability to obtain sufficient exemptions from the renegotiation was a major contributing factor in the UK’s Leave decision in the referendum, underlying much of the opposition from Conservatives and the British press (Oliver 2017, 77-78; Seldon and Snowdon 2016, 549). And the story of differentiation and Brexit did not end there, given the emphasis Cameron’s successor, Theresa May, placed on obtaining bespoke arrangements from outside the club (Cardwell 2019, 1408; Laffan 2019, 27).

But the lessons of Brexit for differentiation are disputed. If the original aim of granting opt-outs was to allow integration to proceed in the face of short-term political obstacles, their failure to prevent Brexit suggests the anticipated ‘catch-up’ effects may not exist, thereby exposing the “limits of internal differentiation” (Riedel 2018, 104). In the words of Leruth et
al. (2019c, 1386), since “the UK’s experience of differentiated integration did not create the expected centripetal effects…differentiation might be counterproductive in terms of promoting further integration in the medium to long run” (Leruth et al. 2019c, 1386). Moreover, the UK’s opt-outs may have even contributed to the Brexit vote, since they arguably conditioned London to expect further special treatment (Cardwell 2019, 1408), diminished the UK’s political influence within the Union (Chopin and Lequesne 2016, 531), and, in the case of the Euro opt-out, lowered the adjustment costs of exit (Gastinger 2019, 6). Thus, it has been argued that if “the EU needs to heed a lesson from Brexit, it is that there are limits to what differentiated integration can achieve” (Bongardt and Torres 2020, 160). And yet others suggest precisely the opposite - namely, that the lesson of Brexit is that the EU needs more, not less, integration. Bickerton, for example, has argued the Brexit vote resulted from the problematic externalities of the combination of common EU rules and diverse national economic models, claiming “the only way of managing the tensions thrown up by this combination of national diversity and deep interdependence is exit” (Bickerton 2019, 243). A similar argument is found in Pisani-Ferry et al.’s (2016, 3) advocacy of a continental partnership which imagines far greater levels of external differentiation on the basis that Brexit demonstrates a need to accommodate more diverse perspectives.

What separates these divergent lessons about Brexit? It cannot be the representativeness of Brexit, since any lessons require that the UK is not regarded as such a specific case that generalisations cannot be made. Nor can it be the mere fact of externalities arising from opt-outs, since both proponents and critics of differentiation acknowledge that problems have emerged from the UK’s opt-outs, especially from the Euro (e.g. Thompson 2017, 439-442). Rather, there are three factors which separate these views. The first distinction is between those who trace demand for differentiation to underlying political and economic rationales for
exceptionalism, and those who trace these demands back to the offer of exceptionalism itself. The second concerns whether externalities arise from *incomplete* differentiation or whether they are rather a product of differentiation tout court. And the third distinction is between those who regard differentiation as a legitimate basis for a reformed EU and those who regard differentiation as an aberration from core EU values. Generally speaking, proponents of further differentiation argue the flaws of Brexit lie in the incompleteness of a necessarily differentiated EU, while advocates of less differentiation contend the UK’s opt-outs introduced both problematic externalities and demand for further special treatment.

Brexit can therefore lend itself to a number of different lessons. But which lessons matter, politically, depends on how Brexit is viewed among the EU27. While it is too early to offer a thoroughgoing survey of the lessons of Brexit, it is notable that the dominant post-Brexit narrative has generally portrayed the UK as the ‘awkward partner’, the implication being that the troubles of Brexit are a UK phenomenon, not an internal EU issue (Bickerton 2018, 132; Jensen and Kelstrup 2019, 33; Leruth et al. 2019a, 1021). Politically this is unsurprising, given the EU’s incentive, post-Brexit, to emphasise the continuing viability of the integration project, and the usefulness of Brexit as a demonstration of the folly of withdrawal (Beaumont 2019, 16). It is also an understandable response to the rise of populist and Eurosceptic actors across the continent, many of whom are actively ‘benchmarking’ the Brexit process to see how viable the promise of exit might be (De Vries 2017, 39). Thus, while the lessons of Brexit for differentiation can be interpreted in a number of different ways, the dominant view among the EU27 - which cannot be divorced from the politics of British withdrawal - has been that Brexit shows the dangers of opting out from European integration as well as the distinctiveness of British demands. In other words, as the EU27 see it, Brexit casts differentiation in a negative light.
(3) Catalyst for EU Reform

Brexit can also be viewed as a catalyst for reform, having re-ignited debate among policymakers about the value (or otherwise) of differentiation as a model for the future EU (e.g. De Witte 2018, 227; Oberg 2020, 151). It has done so, arguably, by fostering a sense of crisis among European elites regarding the consequences of the British decision and the sustainability of the institutional status quo (Burk and Leuffen 2019, 1395; Leruth et al. 2019a, 1020; Schmidt 2019, 298) and by removing one of the countries often regarded as a stumbling block to reform (e.g. Markakis 2020, 506; Riedel 2018, 110). Proposals for greater differentiation have come, unsurprisingly, from France, a long-standing supporter of two-speed Europe (De Witte 2018, 227), as well as from influential think-tanks (e.g. Pisani-Ferry et al. 2016) and even from the European Commission itself, although the latter proposed a differentiated scenario (“those who want more do more”) alongside a number of alternative proposals (European Commission 2017). Brexit has thus brought about something of a reform moment in Brussels, within which proposals for greater differentiation vie with counterarguments in favour of greater harmonisation.

But it remains unclear whether we should expect this moment to bring about a more differentiated EU. Several scholars have indeed predicted a move towards greater differentiation (e.g. De Witte 2018). Schmidt argues that “the future of Europe will be one of differentiated integration” (2019, 294), predicting movement towards a soft-core Europe comprising “overlapping clusters of member-states participating in the EU’s many different policy communities” (2019, 307). Pisani-Ferry et al. have argued Brexit marks “a major
constitutional change for the UK and a significant rupture for the EU” and suggest the EU moves towards a model based on distinct clubs of insiders and outsiders (2016, 1). But it has also been suggested that Brexit may bring about greater harmonisation with “the exit of the EU’s most eurosceptic and ‘awkward partner’ (Leruth et al. 2019a, 1015).¹ Riedel, for instance, suggests Brexit may either “help to reform the EU into a more differentiated system that will…accommodate countries willing to integrate at various speeds” or that post-Brexit “the EU may accelerate now towards…‘ever closer union’” (Riedel 2018, 99-100). And Martill and Sus (2018, 848) identify opportunities in security and defence both for more differentiation in some areas and greater harmonization in others.

There are several questions bound up in these divergent views of Brexit’s impact on the potential for EU reform. One is whether Brexit pushes the EU towards greater harmonisation or differentiation, an assessment which in turn hinges upon the lessons of Brexit and the effects of British withdrawal on the demand for further opt-outs. There is also divergence on the question of whether movement towards integration or disintegration will characterise European integration, or whether the EU will continue to ‘muddle through’ (De Vries 2017, 39; Leruth et al. 2019a, 1023-1024). Each of these scenarios, of course, may involve differentiation to some extent. And the debate involves a parallel discussion of the UK’s role in facilitating EU reform, and what the consequences of British exit are for EU reform. Some scholars have focused on the significance of ‘crisis’ for enabling reform (e.g. Martill and Sus 2018) while others have focused on the increase in member-state unity post-Brexit as an enabling factor (Jensen and Kelstrup 2019, 29; Laffan 2019, 13) or on the removal of the UK as a specific stumbling block to reform (Leruth et al. 2019a, 1024; Markakis 2020, 506).

¹ The authors are clear that this is only one potential scenario, and such uncertainty is also reflected in the work of other scholars on the topic.
But the record to-date suggests the Brexit-induced reform moment in the EU will not result in a more starkly differentiated Union anytime soon. While Brexit has brought about increased unity of purpose among the EU27, this has not translated into agreement on the substance of EU reform. This is perhaps most evident in relation to the Franco-German axis on which the balance of power in Europe now rests (Krotz and Schild 2018). While France has pushed a vanguardist concept of Europe, with smaller groups of member states moving forward together more efficiently, the German position is associated more with the defence of core European principles (Turner et al. 2019, 231; Schimmelfennig 2019) and with preventing any decline in solidarity between the remaining member states (Paterson 2018, 93). In the absence of consensus on the direction of travel, the inevitable consequence is the continuation of the status quo, since the ‘joint decision trap’ precludes change which is not close to the common denominator (Kroll and Leuffen 2016, 1312; Scharpf 1988). Divergence among the EU27 also renders the removal of the British ‘veto’ less significant, since it highlights what many already suspected, namely that reform-sceptic member states were often happy to hide behind British opposition rather than speak out openly against proposals.

(4) Managing the Future Relationship
The need to specify arrangements for the EU’s post-Brexit relationship with the UK raises the prospect of an increase in external forms of differentiation (e.g. Gstöhl and Phinnemore, forthcoming). Because of the difficulties associated with unpicking integration, and the costs associated with a ‘hard Brexit’ in which the UK leaves the single market (Hix 2018, 11, 14), it is often assumed that the UK will wish to continue to opt-in to a number of EU policies as a non-member (Schimmelfennig 2018, 1156). The extent of desired British participation in forms of EU governance has been difficult to determine owing to initial UK indecision and the rhetoric associated with British ‘hard bargaining’ (Larsén and Khorana 2020; Martill and Staiger, forthcoming). Theresa May’s ‘red lines’ appeared to rule out anything other than a hard Brexit (HM Government 2017), but May also spelled out her desire for a ‘bespoke deal’ involving sectoral participation in the single market, and subsequently rowed back on a number of red lines (Schnapper, forthcoming). While the negotiations on the future relationship are ongoing (e.g. Larik 2020, 459-460), the question of external differentiation remains open, since any outcome shy of the hardest (‘no deal’) Brexit will involve at least some form of external differentiation (Leruth et al. 2019c, 1383, 1391).

The scholarly literature generally agrees Brexit may lead to more external differentiation, but diverges on questions of form and scope. For some, Brexit initially held out the possibility of strengthening existing forms of external differentiation (such as EEA membership), or of developing extra-EU forms of collaboration (Murray and Brianson 2019, 1434), though subsequent events have largely precluded this outcome. Several scholars foresaw the future relationship developing in the direction of more bespoke forms of external differentiation which will go beyond existing options, potentially making Brexit “a ground-breaking case of differentiated disintegration and as a new form of flexible integration” (Leruth et al. 2019a, 1015). Schimmelfennig has characterised Brexit as an external form of differentiated
disintegration in which - short of the hardest Brexit - the UK seeks to selectively reduce its participation in areas of EU policymaking (2018, 1167). And there are those who suggest the basis for the UK-EU future relationship may establish a model for other member states with similar preferences to the UK, such that the result will be a more differentiation Union tout court, rather than a distinct form of differentiation vis-à-vis the UK (e.g. Pisani-Ferry 2016, 3).

There are a number of conceptual issues intertwined in projections of the extent of differentiation entailed in the UK-EU future relationship. One is the extent of UK participation in EU policies entailed in the future relationship and whether this approximates what we might understand meaningfully as external differentiation, or whether this ends up looking more like the EU’s relations with non-European third countries (such as Canada or Japan) (Murray and Brianson 2019, 1434). Distinct from the scope of participation is the question of bespokeness, and whether the future relationship reinforces existing ‘off the shelf’ models of association, or whether it rather produces a new model tailored to the specifics of the UK’s situation. At issue here is whether the arrangements for the future relationship merely reinforce existing models or whether they encourage the further diversification of models and strengthen the idea that forms of access are tailored to specific national circumstances (e.g. Featherstone 2017). This in turn leads to the final question, which is the extent to which any bespoke arrangements for the UK act as a ‘model’ for others to adopt. The attractiveness of any British model largely depends on whether bespoke elements are seen to confer advantages on the UK relative to its prior position as a member, and thus depend in part on the UK’s bargaining power vis-à-vis the EU (e.g. Laffan 2019, 24-25).

The course of the talks thus far suggests the establishment of a distinct ‘British model’ of external differentiation is unlikely. May’s initial proposal for a ‘bespoke’ deal (Figueira and
Martill, forthcoming), close collaboration in security and defence (HM Government 2018a), a facilitated customs partnership to overcome the Irish border problem, and sector-by-sector participation in aspects of the single market (HM Government 2018b) not only failed to attract support domestically, but also fell afoul of Brussels’ own red lines. These included the indivisibility of the ‘four freedoms’, the autonomy of EU decision-making, and the principle of disallowing cherry picking, and were rejected, in the most part, on these grounds (Figueira and Martill, forthcoming; Jensen and Kelstrup 2019, 28; Laffan 2019, 17-18). Politically it was never in the EU’s interest to make exit an attractive proposition (Gstöhl and Phinnemore, forthcoming; Laffan 2019, 24; Schimmelfennig 2019, 186), and Brussels’ bargaining advantage allowed it to dictate the terms of the discussion (Martill and Staiger, forthcoming; Schimmelfennig 2018, 1168). The negotiated Withdrawal Agreement is, unsurprisingly, a highly distinct document which does contain bespoke provisions, including those for managing the Irish border, guaranteeing citizens’ rights after withdrawal, and establishing short-term continuity through the ‘transition period’ (Gstöhl and Phinnemore, forthcoming; Harvey 2020; Larik 2020, 447). But its contents primarily reflect the concerns of the EU27 and, by extension, the EU’s greater bargaining power (Jones 2019, 44-48; Schnapper, forthcoming). Moreover, in terms of the future relationship, the UK has been forced to concede in the talks on the future relationship that sectoral access to the single market is not a realistic proposition, while the talks on a security partnership have fallen by the wayside (Whitman 2020).

**Conclusion**

The implications of Brexit for differentiation have received considerable scholarly attention since the 2016 referendum, not least given the number of ways in which the UK and
differentiated integration have been implicated over the years. But it is still unclear whether Brexit will lead to more or less differentiation in the future EU, which aspects of British withdrawal matter most in this regard, and which direction some of the most relevant aspects of Brexit push in. This article examined four aspects of the Brexit vote deemed relevant for the level of differentiation in the future EU, setting out the key fault-lines of debate and the evidence available so far from the Brexit process. It suggested that, in spite of the breadth of conceptual argumentation, in practice Brexit is not likely to bring about movement towards a more starkly differentiated EU, not least because the political context of withdrawal mitigates against this. It does so by disincentivising the creation of viable forms of external differentiation, downplaying problematic lessons from the Brexit process for EU governance, and leading pivotal member states to double-down on the long-term unity of the EU27.

The contribution of this article has been two-fold: The first is to provide a clearer and more systematic overview of the various ways in which Brexit and differentiation are linked in order to help us understand the ‘bigger picture’ of British withdrawal and to identify - and speak to - divergence within the available literature. The second is to draw upon the evidence from the Brexit process so far to account for the direction in which the EU seems to be moving and, as part of this, to highlight the significance of the politics of disintegration in determining the direction of travel.

Bibliography


*Comparative European Politics*, 18(5): 858-877.


https://doi.org/10.1080/13501763.2015.1020835


