Brexit and the question of 'Norway Model Entrapment'

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Introduction

One of the key slogans in the Brexit referendum campaign was the need to 'take back control'.[1] The Leave campaign argued that the EU had integrated too far, and by removing border controls, had opened the UK to a large-scale immigration that they claimed was causing all kinds of problems. The only solution for the UK to restore control was to leave the EU. Further, the Leave campaign argued that the UK had better options than its present EU membership, and an independent UK would be in a position to exercise significant influence on its future relationship with the EU.

The question that I address in this article is whether the Brexiteers' assumptions pan out. Brexit has not taken place, so no conclusive answer is available, but there are sources of knowledge that we can tap into. For one, we know from leaders' speeches and policy papers how the UK government seeks to structure its relationship with the EU post-Brexit. Further, we have comprehensive knowledge about the conditions that shape states' exercise of sovereign control in the European context, including the experiences of closely associated non-members. Norway, as a closely associated non-member, has faced a similar dilemma to that of the UK: a Eurosceptic population that rejects EU membership, coupled with an economic sector that is highly dependent on secure access to the EU's internal market. There is more to the analogy: Norway entered the EEA Agreement with the EU before the 1994 popular referendum that rejected EU membership. Both Norway and the UK had therefore adopted EU norms and rules *before* the referenda that rejected EU membership (the UK of today, has adopted a far greater body of EU norms and rules than had Norway in 1994).

For Norway, the period after the 1994-referendum is one of ever-closer EU affiliation without formal membership: those that won the referendum have lost every day since. For the UK, taking back control entails reversing or undoing its strong EU encoding. The question is

[1] http://www.voteleavetakecontrol.org/why_vote_leave.html

whether the UK's much greater bargaining strength will enable it to stake out a course that is different from Norway's - a rule-taker and a subject to taxation without representation.

An important assumption that informed the Brexiteers when underlining the need to take back control was that this implied popular control. In discussing the actual control that non-members (Norway) and ex-members (UK) exercise, we need to consider not only national executives' control, but also if this translates into popular control. The emphasis here is on the role of popularly elected bodies.

In the next section, I start by outlining the key features of today's altered context of sovereignty and control in Europe. The next section outlines how the UK government seeks to retake control by means of its future relationship to the EU. The section after that focuses on Norway's EU relationship, with emphasis on what that says about control. Then follows a section that considers how transferable Norway's lessons are to the UK. The final section is the conclusion.

How to understand sovereignty and control in contemporary Europe?

We have long been accustomed to thinking of state sovereignty as synonymous with a territorially based system of governing capable of exercising sovereign control. More concretely that entails "internal supremacy over all other authorities within a given territory and external independence of outside authorities."(Keohane 2002, 746)

The EU is different. The EU institutions do not enjoy internal supremacy, and the member states are critically important in fashioning the EU's relations to the world. The strong member state presence in the institutions at the EU level structures the integration process: it is a matter of fusing levels (EU and member state) and sharing competencies rather than singling out a distinct European level of government with exclusive competencies (Wessels 1997). In the EU, states *pool and share sovereignty*; they do not cede sovereignty to a set of independent EU institutions. This process of pooling has profound implications for the ensuing notion of sovereignty:

> States that are members of the European Union have broken sharply with the classical tradition of state sovereignty. Sovereignty is pooled, in the sense that, in many areas, states' legal authority over internal and external affairs is transferred to the Community as a whole, authorising action through procedures not involving state vetoes […]. Under conditions of extensive and intensive interdependence, formal

> sovereignty becomes less a territorially defined barrier than a bargaining resource."(Keohane 2002, 748)

The European Union is the most advanced case where the substantive contents of state sovereignty has been transformed in a *relational* direction, in other words where states come together to negotiate their terms of co-existence. Participation in common decision-making institutions becomes a critically important aspect of governing. The turn to participation is clearly a part of a global development towards heightened interdependence, which implies that: "The only way most states can realise and express their sovereignty is through participation in the various regimes that regulate and order the international system."(Chayes and Chayes 1995, 27)

What that implies in the EU context, is that the more the member states' concerns are made subject to joint decisions, the more important it is to be present and to participate in making these decisions. The European Council (EC) is a case in point because it is in charge of treaty making/change (when operating as the core body of an Intergovernmental Conference [IGC]). Participation in the European Council assures access to the forums where the key decisions guiding the EU's future development are made. The European Council assumes a wide range of roles and played a key role in the EU's crisis handling (Wessels 2016).

The altered conditions of *external* sovereign control transform the member states' ability to exercise *internal* sovereign control. In effect, the forums and procedures that determine joint decisions have increasingly come to shape the nature and scope of each member state's *self-governing*. The EU's member states are no longer capable of distinguishing very clearly between domestic and international affairs, as both sets of issues are increasingly determined (jointly) in common intergovernmental and supranational bodies.

That turns the classical approach to state sovereignty as a case of self-governing on its head. If it is necessary to participate in common institutions in order to wield influence on those decisions that states have agreed to undertake in common *and*, notably, such participation in common institutions is *needed* for each state to influence the scope and conditions of its self-governing, then a qualitative change has taken place. The EU appears to be moving towards a system where institutions of joint decision-making increasingly shape

and set the terms of *domestic* state sovereign rule.[2] Such a system is based on an altered conception of sovereignty, which seeks to balance shared rule with self-rule in a distinct political formation where levels of governing are closely interwoven.

One important implication is that in today's interdependent world it makes little sense to equate state sovereignty and control, because the standard assumptions associated with state sovereignty no longer apply. States exercise sovereign control not only through an own set of territorially based institutions which the classical approach to sovereignty assumes, but through common EU institutions where they participate. Thus, the state's institutions do not simply implement internally determined rules, but implement rules that states have decided in common. States' ability to shape their *external* relations has changed, and the same implies to their ability to shape *internal* relations.

A second implication is that the dense European context of rules and norms conditions bargaining: how it takes place, where it takes place, how much scope there is for bargaining, and the nature of the outcomes. This is theoretically significant: it signals that in the European context a power and bargaining logic must contend with a rule and norm compliance logic.[3] Rules and norms raise functional and normative expectations: functional in terms of predictability; normative in terms of acceptability (appropriate to the circumstances and/or just in reference to principles of justice and fairness). Whereas the distinction between bargaining and norm compliance is analytically important, in practice there is overlap and gray zones. For instance is the European construct steeped in rules (integration through law), but it is at the same time deeply contested, in terms of what it is and what it should be. Member states and other actors at times shirk or circumvent the rules, and strike bargains within or without the context of the treaties, as we have seen for instance in the EU's crises responses (Menéndez 2013; Everson and Joerges 2014; White 2015a,b). The fact of contestation makes having access to those forums where key bargains are struck particularly important.

A third implication is that political leadership includes paying attention to people's normative expectations pertaining to sovereign control and democracy, or to put it differently,

[2] This remains the case even if the EU has seen a turn to 'new intergovernmentalism'. Bickerton et al, 2015. Post-Maastricht integration has strengthened those bodies at the EU-level with a direct state presence. Individual states' scope for self-governing has continued to narrow.

[3] Actors may adapt to norms and rules, for reasons of power or domination. Actors also comply with rules and norms because they find them appropriate, reasonable or just. For a brief selection of relevant sources, consider Habermas 1996; Heath 2008; March and Olsen 1989, 1995; Searle 2005.

to manage the gap between facts and norms (the doctrine of state sovereignty). Leaders can get entrapped if they contribute to uphold normative expectations that are out of step with reality.

The next section will assess the UK's approach to increasing control through Brexit.

The UK's Brexit Strategy and the Issue of Control

The decision to hold a popular referendum and to respect the outcome (of a formally speaking consultative referendum) signals a strong commitment to popular control. How strong depends on whether the public can determine which option to choose. The voters were confronted with a 'choice under ambiguity'(Fossum 2016). As the government acknowledged (HM Government 2016), there were three main alternatives to continued EU membership: the Norway Model, bilateral negotiated agreements, and a WTO-only model. It was quite clear what voting no would entail, but not which of these qualitatively different forms of association voting yes would produce.

After the referendum, the government sought and obtained considerable leverage to define the nature of the UK's relationship to the EU. It was after PM May presented the government's position in her January 17, 2017 speech that the range of options was narrowed down (May 2017).[4] The UK government stated that it would not seek to retain full access to the EU's internal market and customs union because that entailed reneging on control of immigration. The EU has consistently underlined that the four freedoms are indivisible, and to be accepted in full.

Prior to the June 8, 2017 election, the UK government was clearly heading for a 'hard' Brexit. Precisely what that entailed was not made clear, as is apparent from May's speech, where she underlined:

> Not partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out. We do not seek to adopt a model already enjoyed by other countries. We do not seek to hold on to bits of membership as we leave… This agreement should allow for the freest possible trade in goods and services between Britain and the EU's member states. It should give British companies the maximum freedom to trade with and operate within European markets - and let

[4] See also HM Government White Paper Cm 9417.

> European businesses do the same in Britain. But I want to be clear. What I am proposing cannot mean membership of the Single Market.(May 2017)

Alan Renwick in his comprehensive overview of the process of Brexit presents the following options:

> first, a comprehensive deal covering both the terms of Brexit and the detailed terms of the UK's future relationship with the EU;
> second, a deal on withdrawal terms that is combined with transitional arrangements that tide matters over while the future relationship is determined;
> third, a deal on withdrawal terms only, with negotiations on the future relationship conducted after withdrawal, but without any transitional arrangements in place during that period;
> fourth, no deal, with Brexit taking place after two years (or longer if an extension has been agreed) via the automatic provision set out in Article 50(3);
> finally, a decision for the UK to stay within the EU after all.(Renwick 2017, 9)

Out of these, the May government prefers the first: a hard Brexit with soft edges, or a cushion, in the sense that it leaves space for the two sides to adjust to the altered situation that Brexit creates. The EU prefers the second option, which is a more explicit two-stage process: settle the terms of exit first and thereafter settle the terms of the new form of association between the UK and the EU. That option brings up considerable uncertainty as to whether the UK will be able to settle its future relationship with the EU within the two-year negotiation period, which Article 50 TEU prescribes (from the moment the decision to exit has been communicated to the European Council, which was March 29, 2017). That is the approach that is adopted now that the negotiations have started. The third option is the quintessential 'hard Brexit', which would subject the UK to WTO rules, and the possible reintroduction of tariffs. The fourth option is disorderly Brexit. PM May repeatedly noted that: "no deal for Britain is better than a bad deal for Britain."

After the June 8 election, May's scope for pursuing the latter policy stance has narrowed because there is greater support for a 'soft' Brexit, and less support for the third scenario in Parliament. At the same time, a no deal scenario remains likely due to the uncertainty surrounding who will govern and the likelihood that the various factions in UK

politics will prove unable to pursue a coherent position. That uncertainty also means that we cannot rule out the fifth scenario of continued EU membership.

What are the implications for the issue of control?

On control, three sets of considerations are particularly important. One pertains to the UK's present and future access to and control of the core decisions affecting it in today's interdependent world. The core assumption of Brexit is that the UK will resolve this by transferring control back to the UK, which implies that it will no longer be subject to EU rules and norms. Since the EU, as noted above, has reconfigured the terms under which control is exercised, for the UK, the issue post-Brexit is whether it will be able to ensure that its domestic institutions will fill the space that the EU bodies are currently filling. The UK will have no presence in these EU-bodies after Brexit. In addition is the question of what to do with the vast array of EU laws and regulations that the UK has incorporated. Restoring full sovereign control entails undoing all of this.

The final aspect of restoring control pertains to the process of Brexit. The May government upped the ante in control terms, since as May put it in her January 17 speech cited above, the UK both wanted out of the EU's internal market and at the same time a close and predictable relationship with the EU. The only way to interpret that was that the UK government assumed that it was in such a strong bargaining position that it did not need to settle for the certainty of rule-based cooperation. The UK government staked control very much on its bargaining strength and acumen.

With regard to the first consideration, that of access to the EU's key decision-making bodies, notably the European Council, the UK retains a presence until the formal exit takes place. But, since it cannot be permitted to sit at both sides of the negotiating table, it is excluded when the Brexit issue comes up in the European Council. That need not exclude UK influence on the negotiations in the European Council. It could find allies in the European Council that could be interested in using Brexit as a vehicle to pursue their own goals.[5] Some of them could also use the Brexit negotiations as an occasion to throw spanners into the EU's works. Even if they were willing to strike deals with the UK on some issues, these states will not necessarily operate as surrogate representatives for the UK, that is promote the UK's views in the European Council. Poland for one is quite supportive of the UK's position, but

[5] Visegrad states, cf. Renwick 2017

Poland is concerned about the role of Polish citizens in the UK, and seeks continued Polish access to the UK.[6] Immigration is therefore an issue that divides the UK and Poland. In addition, the EU has found better together than most had expected, and has presented the UK with a detailed list of requirements.[7]

The second consideration pertaining to control refers to the considerable challenge of reversing the UK's EU-encoding, in other words, the profound manner in which the UK has become Europeanized through its 45-year long EU-membership. The UK government's approach is

> to convert the body of existing EU law into domestic law, after which Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of that law to keep, amend or repeal once we have left the EU. **This ensures that, as a general rule, the same rules and laws will apply after we leave the EU as they did before**.[8]

The main instrument labelled the Great Repeal Bill (GRB) will authorize the government to undertake the process of sorting out which rules to keep and which to abolish or modify.[9] The very need for a GRB testifies to the difficulties of reasserting sovereign control in today's Europe. Norm and rule predictability weigh in as critical considerations, greatly reducing the scope for comprehensive changes, and testifying to the need to understand the nature and dynamics of norm and rule adaptation if we are to understand the realities of control. Further, the GRB raises a number of thorny questions of executive control (Fowles 2017).

The third aspect of control pertains to the UK government's ability to control the Brexit process. The May government staked its control of the process on tight domestic control and a strong reliance on bargaining strength. The June 8 election has largely undermined both elements: the government is faced with a hung Parliament that seeks a far more active role in the process and a strengthened contingent of 'soft' Brexiteers. There will likely be greater parliamentary control of the process. That may make the process more unwieldy. It could also mean that there will be less scope for bargaining, as the UK and the EU acknowledge the relevance of the rules in place.

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[6] https://euobserver.com/uk-referendum/136076
[7] Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0218&from=EN
[8] HM Government Department for Exiting the European Union, 2017, p.10, bold in original.
[9] This is spelled out in HM Government Department for Exiting the European Union, 2017.

Many of the tensions and contradictions in the UK government's position can be traced back to the dilemma facing the UK when seeking to reassert sovereign control in today's interdependent European context. Fundamental decisions are taken in joint forums, and as a consequence of member states pooling and sharing sovereignty. The process is marked by bargaining under the shadow of rules, in other words, it is conditioned by the rules guiding interstate interaction. When actors no longer have access to the key forums, how much and what kind of control can be reverted back to the nation state? The Norwegian experience offers some instructive lessons, particularly in the post-June 8 election context. In the next section, we will render these explicit. The subsequent section will try to establish how transferable they are to the UK.

The 'Norway Model' and the Issue of Control

EU states pool and share sovereignty in EU institutions. What about a state such as Norway that adopts EU rules and norms, but does not participate in the institutions, where member states share and pool sovereignty? Does a state that is closely associated with the EU, but does not participate in the pooling and sharing of sovereignty *retain* its sovereignty? In assessing this, we need to go beyond the formal nature of the association and look at actual relations of control. In addition, and as noted above, today's altered circumstances surrounding external control greatly affect states' ability to control their internal processes. What is the situation for Norway? In the following, we examine the nature and extent of Norway's relationship to the EU and the implications for Norway's ability to exercise domestic control.

The 'Norway Model' is structured as follows. Norway is associated with the EU through the European Economic Area Agreement (EEA), which is an international treaty between the three EFTA states Norway, Iceland and Lichtenstein (Switzerland is an EFTA member but rejected EEA membership) and the EU. The EEA Agreement is based on a two-pillar structure with bridging arrangements between EFTA and the EU.[10] The institutional arrangement reflects the fact that the EEA-EFTA states were not willing to rescind sovereignty to a set of international institutions, even if, as we shall see, they are profoundly affected by the pooling and sharing that is taking place in the EU. Norway has also entered into a number of other agreements with the EU, including, Schengen association agreements, agreements on asylum and police cooperation (Dublin I, II and III), and agreements on

[10] See: http://www.efta.int/eea/eea-agreement/eea-basic-features#1

foreign and security policy (Norway participates in the EU's battle groups). The sum total of these agreements entails that Norway ends up adopting around three quarters of the total realm of EU-cooperation (Official Norwegian Report NOU 2012:2, 790).

The EEA agreement is *dynamic*, in depth and breadth terms: new relevant legislation is included in an ongoing manner. The agreement is territorially expanded in line with every expansion in EU membership. This set of agreements gives the EEA states assured access to the EU's internal market and locates them within the EU's borders with responsibility for border control. An important purpose of the EEA Agreement is to ensure legal homogeneity within the entire EEA (which pre-Brexit consists in 31 states, the EU and the three EFTA states Norway, Iceland and Lichtenstein).

In the case of Norway, the EU's legislation – in contrast to the situation in the member states – is not formally anchored in the legal precepts of supremacy and direct effect. Reality is however not as different as the formal structure would suggest.[11] In the member states, EU law trumps national law in those issue areas where the EU has been conferred competence. In Norway, the EFTA Surveillance Authority (ESA[12]) ensures that legal incorporation is in accordance with EU law, and the EFTA Court in practice ensures the incorporation of EU law. This relationship is clearly one-way; Norwegian citizens are pure recipients of decisions made outside of Norway. There is no form of reciprocity or 'export' of Norwegian decisions to the EU. The Norwegian process of incorporating legislation starts *after* a decision has been reached in the EU. Through Norway's dense relationship with the EU, Norway is not only subject to far more legislation from the EU than from any other international organization; it is a recipient of legal norms from a system with obvious constitutional features, however that system is defined. As it is pointed out by many analysts, Norwegian popularly elected representatives and the Norwegian government have lost the right of initiative as per Art. 76 of the Norwegian Constitution (Stavang 2002, 135). The EEA Agreement has been characterized as locating its members in a 'semi-colonial' setting (Tovias 2006).

What are the implications for control?

[11] EEA expert Hans Petter Graver noted in a parliamentary hearing on the EEA Agreement in 2002 that: 'Now it appears that the EFTA Court has introduced some kind of quasi-direct effect of the agreement' (author's translation), hearing in the Committee on Foreign Affairs, Stortinget, 14 October 2002, available at <http://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Horinger/2002-2003/021014/sak/>, last accessed 12 May 2017.

[12] EFTA 'About the Authority', available at: <http://www.eftasurv.int/about-the-authority/the-authority-at-a-glance-/>, last accessed 12 May 2017.

With regard to Norway's access to and control of those bodies where member states and their citizens shape decisions in common in the EU, notably the European Council, the Council and the EP, Norway is excluded from any decisional impact. Norway of course has no role in EU treaty change. That brings up a problematic aspect of the EEA relationship, because "(t)he EEA has no mechanism to formally update its rules as a follow-up to such changes in the EU." Insofar as the EEA rules are subsequently changed through legal interpretation, "this means that legislation is changed without any collaboration from the EFTA countries." (Graver 2016, 818)

Another telling example is in the field of agriculture (especially through the veterinary agreement and agreements on animal health). At present, 40 percent of the rules and regulations that Norway incorporates are in the field of agriculture, which is politically very sensitive and was *explicitly excluded* from the initial EEA Agreement. They became included because of the need for market access for fish and through the dynamics of horizontal expansion. These provisions are not confined to border crossing activities but cover internal affairs: "In practice today, this body of regulations makes up the main portion of all public regulation pertaining to production, sale, labeling, hygiene and so forth with regard to fish and agriculture in Norway and to a large extent sets the standards in both these sectors."(Official Norwegian Report NOU 2012:2, 646-47, author's translation) The EU's increasing regulation of issues under the rubric of agriculture shows that this is not only a matter of Norway losing out on co-determination: Norway is losing influence on its scope and terms of *self-determination* in the issue-areas that it explicitly sought to exclude from the initial EEA Agreement for domestic political reasons. This latter problem is not only about a state's ability to control a substantive policy area; it pertains to the deeper question of the state's ability to shape the terms of its self-governing, in other words it is a critical issue of constitutional sovereignty.

A third example pertains to the issue of contiguity in norms, rules and interpretations, which is critically important for legal predictability. The Norwegian Supreme Court in the rulings Nye Kystlink and Bottolvs voluntarily adapted to EU law, and did so in issue-areas that were *not* regulated by the EEA agreement (Fredriksen 2015). In a situation of tight regulation coupled with 'regulatory gaps', rule contiguity becomes an important element of rule predictability. A closely associated non-member will feel strong domestic pressures for filling in whatever 'gaps' there are between the different agreements that it has signed with the EU.

These three examples illustrate how the EEA countries face the EU's sharing and pooling of sovereignty as a three-pronged problem: as a lack of access to bodies where shared rule is exercised (treaty change); as losing control of the terms of self-rule in sensitive issue-areas that they had removed from joint handling (which in Norway's case was agriculture); and as a matter of ensuring clear, coherent and predictable rules across related issue-areas.

A closely affiliated non-member, such as Norway, loses out on co-determination *and* self-determination. The effect is structural: the closer the association, the more the EU determines the conditions for democratic self-rule in the associated non-member states.

An examination of the EU's different forms of association agreements with non-members showed that those with the closest association, the EEA countries and Switzerland positioned themselves in relation to the EU as a form of *self-inflicted hegemony*. An important finding was that this problem became more manifest the closer the association (Eriksen and Fossum 2015). Thus, even if Switzerland with its numerous bilateral agreements has a different formal attachment to that of the EEA, in actual practice the arrangements have similar hegemonic effects (Lavenex and Schwok 2015).

Two main points stand out. One is that the critical element is not the formal type of affiliation but how close the association is. The closer a non-member is associated to the EU, the more the EU sets the terms of operation for that state. The other is that the dynamics that drive these processes are not only asymmetrical power relations, but domestic pressures in the non-members for EU access and legal predictability, hence, the need to adopt EU rules and norms.

What are the implications for internal control?

Norway's lack of external influence has domestic implications, including on the scope and nature of domestic control. The issue of EU membership has been the most conflictual issue in Norway's post-war history, and it continues to animate people. This profoundly divisive issue has been politically contained and has not been allowed to shape Norway's dynamic EU adaptation, which proceeds almost without any friction (Official Norwegian Report, NOU 2012:2 ,20). The EEA Agreement includes a right to reserve oneself against a given EU directive, but thus far in the 23 years of the EEA's existence Norway has never used it. At the heart of Norway's relationship to the EU, there is a paradox: there is very little political conflict surrounding the comprehensive, dynamic and extremely asymmetric process of adaptation whereas the EU membership issue is a deeply contested matter.

From a political perspective, it is important to consider how the circumstances surrounding matters of domestic control may often shift the emphasis from governing to conflict handling. The lack of external control and large-scale rule adoption feed into the domestic realm; this situation constrains and conditions the scope for exercising control, which often boils down to a matter of managing the domestic fall-out from decisions made elsewhere (at EU level).

The Norwegian political system has de-politicized the dynamic process of EU adaptation. That has not been done through by-passing the political system, or the popularly elected bodies, through for instance establishing consociational arrangements or specific forums where elites can take decisions without direct popular input. All issues are formally speaking conducted through the parliament, the Storting. Nevertheless, the Storting has been defanged. Consider for instance the Storting's European Consultative Committee. It relates to EU issues differently from what is the case in otherwise comparable Nordic EU member states (consider the very active Danish European Affairs Committee). An analysis of the Norwegian committee's written transcripts revealed that there were very few debates; executives simply briefed the legislators on what was taking place; and the Committee's work and deliberations were marked by a clear 'system-enforced consensus' and absence of debate on principled and constitutional issues (Fossum and Holst 2014).

The political parties are deeply divided on the EU membership issue; and some parties (especially Labour or DNA) are deeply divided internally, as well. They seek to limit the political fallout by keeping the contentious EU membership issue off the agenda. At the same time, there are no attempts by parties to block the functioning of parliamentary democracy in other ways. There are no appeals to the populace to take unlawful action. All parties have served both as opposition parties and have had shorter or longer stints in power, or have supported governing parties during the period in which the EEA Agreement has been in place. In that sense we can say that all parties honour Norway's international obligations as formulated in the EEA Agreement, and when in opposition, they also honour the basic credo of serving as the 'loyal opposition'.

The political system has established a particular mechanism for handling EU matters, namely through *gag rules*.[13] The gag rules are foremostly expressed through government declarations or coalition agreements, which specify the government's commitment to

[13] For this notion, see Holmes 1995. For an assessment of how the Norwegian political parties have relied on gag rules such as suicide clauses and other types of mechanisms for preventing the EU membership issue from entering the political agenda, see Fossum 2010.

maintain the present arrangement with the EU, through the EEA Agreement. Each agreement posits that a political party that seeks to alter the status quo – actively seeking EU membership or revoking the EEA Agreement - will violate the coalition agreement. Especially for the large parties it is a Hobson's choice: if you seek to change the EU membership status quo you will no longer be able to govern. Such agreements have been labelled 'suicide clauses' in the media.[14]

The so-called 'suicide clauses' sustain what is often referred to as a political compromise where the no-parties retain Norway's status as a non-member, and the yes-parties are able to engage in binding European cooperation. Gag rules regulate the issue of formal EU membership; they do not regulate the ongoing and dynamic Norwegian incorporation in the EU. If anything, the gag rules have *simplified* the process of active adaptation, because the gag rules make it possible to decouple adaptation from the highly contentious issue of EU membership. The formal status of non-membership is politically important. It provides symbolic reassurance of constitutional-democratic sovereignty, and enables the no-parties to reassure their voters that they as parties in the electorate[15] have successfully managed to keep Norway out of the EU.

The last five years or so have seen increased controversy over aspects of Norway's EU affiliation, but mainly on specific issues associated with specific EU directives. The gag rules by taking attention away from the constitutional aspects of the affiliation have kept the focus on single isolated issues. The gag rules help to detract attention from the *cumulative* effects of Norway's ongoing EU adaptation.

Democratic implications: Executive dominance and de-politicization

The EU is marked by executive dominance. In the case of the EEA, that effect is even more pronounced. The Norwegian parliament, the Storting, is unable to exert influence over decisions made in the EU; it acts as a glorified rubber-stamper. Executive-legislative relations in Norway are altered. If the Norwegian government wants any influence on EU decisions, it has to be proactive, thus limiting the scope for public consultation in Norway. Legislative acts are handled in the EEA system after the decision has been reached in the EU, and there is strong pressure to pass them rapidly and ensure legal homogeneity across the 31-

[14] See http://www.politiskanalyse.no/intro.asp?show=3&arg=41&module=101; og Dagbladet 2004.
[15] What the electorate associates the parties with, cf. Muirhead 2014.

member EEA. It follows that Norwegian civil society is one step behind the decision processes; it cannot act as a corrective to a process increasingly determined by external bodies.

In addition, the parties' handling of the EU issue through such mechanisms as gag rules, are *exacerbating the democratic deficit*. They have been such structured as to permit issue-focused debate and contestation without this degenerating into political stalemate. Precisely because of this delinking, the citizens are not informed about the constitutional-democratic implications of what is going on. One aspect is the lack of alternative depictions of the core constitutional democratic developments in Europe and the issues that are at stake. Second is a tendency to focus on single issues, detracting attention from broader patterns and cumulative effects. Third is de-politicisation. The irony is that whereas the increasingly dense pattern of Norway's EU-association brings issues together, the debates dislodge themselves from broader assessments by focusing on single issues.

In sum, we have seen that Norway's relationship to the EU is deeply problematic from a constitutional-democratic perspective. We need more research if we are to understand the entire range of pathologies that this relationship engenders. I have shown how the consensus-seeking Norwegian political system deals with the highly controversial issue of EU membership and the ongoing EU adaptation process. Norway has devised its own way of handling the discrepancy between facts and norms that states bent on sustaining traditional notions of sovereign control experience in contemporary Europe. It is symptomatic in Norway that successive governments have not sought to adapt people's normative expectations a lot. There is a mix of pragmatism and disbelief, but very little political and public engagement with the rationales and the justifications that are otherwise in Europe drawn on for states pooling and sharing sovereignty.

How transferable are Norway's experiences to the UK?

I will briefly consider how transferable Norway's lessons are to the UK. In doing so, I discuss whether or the extent to which the important differences between the UK and Norway will affect the transferability of the lessons. The point of departure is an important commonality: both the UK and Norway had adopted a broad body of EU rules and norms *before* the referenda that rejected EU membership.

One important lesson from the Norway case was the importance of the structure (proximity) of the relationship. Applied to the UK, the question is whether the UK's far

greater power and international salience will enable it to negotiate a superior arrangement to that of Norway. The question is how much of its power can be transferred into the bargaining process, especially if the UK seeks to stake out an unprecedented arrangement with the EU that both maximises EU market access and maximises domestic control. The problem for the UK is that the more domestic control it seeks, the more vulnerable it is to domestic demands (from business actors and citizens) for rule and norm predictability, and from regions for co-decision. Conversely, the more it seeks continued EU rule/norm alignment, the more vulnerable it is to criticism from Brexiteers for reneging on control and betraying the majority of the population that voted in favour of Brexit.

If the structure of the relationship (and not the specifics of formal agreements that states negotiate with the EU) matters most, then the issue is less about UK bargaining strength and more about what the EU does. If the EU is able to sustain a united front, and stick to the rules in place, the UK will face the difficult choices. Difficulties heap up if tensions arise inside the UK, from opposition parties, or from devolved regions.[16] If the EU fails to sustain a united front and starts making concessions to the UK, these will percolate through the EU system and may generate internal dynamics in the EU that the UK can utilise to its advantage. Nevertheless, the main lesson we can derive from the manner in which states structure their associations with the EU is that the key determinant is the EU, not the UK.

A second lesson from Norway was the dynamic nature of EU rule adaptation and the need for predictability. For the UK post-Brexit, and as noted above, EU rules and norms will be entrenched in the Great Repeal Bill (GRB). The GRB will repeal the European Communities Act of 1972 (ECA), which constitutes the legislative underpinning of the UK's EU membership. At that point, EU law in place in the UK becomes UK law. In other words, the GRB sets up a structure that is highly conducive to ongoing norm adaptation. The GRB ensures that EU law in effect in the UK is no more handled from the EU-level, but from the UK level. This gives a very special twist to the notion of 'taking back control', because it underlines the need to consider issues of control not merely in the light of bargaining processes and outcomes but in terms of the dynamics of norm and rule-adaptation. Reasserting control for the UK then means to go through this enormous volume of regulations and directives, and determine which ones should be altered, and which ones should be kept.

[16] In this connection, it is interesting to note that Nicola Sturgeon's Scotland, which seeks to retain access to the EU's single market and thus a differentiated status from the rest of the UK, has a far more favourable view of Norway's EU arrangement than does the May UK government. Government of Scotland 2016.

The UK government pre-Brexit made a comprehensive assessment of the aspects of EU legislation that were problematic, and should be amended, and came up with next to nothing.[17] With that in mind it is far from clear what this process will amount to.

Rule adaptation is for Norway a constant through the dynamic nature of the EEA and the Schengen agreements; for the UK it takes on a new shape after Brexit. In any case, both the UK and Norway face rule adaptation as a fact and as intrinsically related to the large body of EU law that they have already incorporated and that informs the operations of their political and administrative systems. The question is what difference it will make that the UK incorporates EU law directly into its domestic system at the very same time that it rescinds control of it. One difference from Norway's situation is that changes in the legislation or new provisions will not be automatically updated. Another difference may stem from how the UK changes the role and status of incorporated EU rules through the GRB process. In both cases, the UK's Europeanized element will get increasingly out of synch with EU rules and norms. The UK will still, as does Norway, face strong domestic pressures for retaining as much rule contiguity as possible. Since the Single Market is a seamless web, that pressure will work across issues. The important similarity between the UK and Norway is that both have to deal with the conflicting pressures for EU norm conformity and domestic divergence as 'insiders' in relation to EU rules and norms, because their systems have been so extensively EU-programmed.

A third lesson from Norway pertains to the manner in which the onus on internal sovereign control on the one hand reinforced the executive and on the other shifted to conflict management through de-politicizing the EU adaptation process. In Norway, the deeply politicised issue of EU membership, a core constitutional issue, was contained and not permitted to intervene in the rapid and dynamic process of EU adaptation. In the UK, an almost opposite politicization logic has unfolded: single issues, such as the metric standard (Morgan 2005) or bent cucumbers have been raised to fundamental issues of loss of control and sovereignty and have been linked to the EU membership issue. The very different politicization – de-politicization dynamics in Norway versus the UK are bound to show up in the UK's EU relationship. It appears very unlikely that the UK political system is going to be able to curtail or contain political conflicts in the manner in which Norway has done.

Brexit is pushed ahead by the fact that the EU membership issue has been politicized *for so long* (Lord 2015), and further that it is quite easy to link single issues to the EU

[17] The assessments are available here: https://www.gov.uk/guidance/review-of-the-balance-of-competences

membership question. The UK political system is politicization-prone: the political style is quite confrontational, amplified by a first-past-the-post electoral system that rewards the largest party; and (perhaps in particular on EU matters) a highly confrontational tabloid press. In contrast, the Norwegian political system is marked by a very high trust in government; a strong consensus-seeking political culture; a proportional electoral system that never produces single-party majority governments; and a far more facts-oriented media scene.

A fourth lesson from Norway is the strong element of executive dominance. There are many indications to the effect that the Brexit process will be an executive-led process. Concerns are raised that executive dominance will mark the process of altering the body of law that the GRB will include (Fowles 2017). This body of law has significant relevance for the devolved regions, which are concerned about the potential for loss of devolved powers. There is no question that how the GRB process is conducted will be of great importance for the future functioning of UK parliamentary democracy.

Finally, both Norway and the UK exhibit a strong gap between facts and norms in the realm of sovereign control. We saw that there are different politicization dynamics in the UK, which will likely affect the relationship between substantive and symbolic politics. In Norway, the strong membership opposition was kept separate from and did not affect policy substance (read rapid and dynamic EU adaptation in a broad range of policy fields). In the UK the government will likely face a far more difficult task of trying to bridge the gap between the reality of interdependence and the strong normative attachment to sovereign control. In Norway politicians were able to manage this without addressing the EU's justifications; it is unlikely that the same is possible in the UK.

This brief assessment suggests that the different circumstances surrounding Norway and the UK will not simply revolve around differences in bargaining strength but rather in terms of how the UK works out the relationship between the pressures for continued rule and norm-adaptation; how it manages the contingent and complex process of bargaining; and how it relates to the normative principles and values involved, including political grandstanding/symbolic politics by all kinds of actors.

Conclusion

This article took as its point of departure the Brexiteers' core claim, namely that Brexit would enable the UK to take back control. The veracity of this claim cannot be adequately assessed

until Brexit has taken place, and the various agreements have been negotiated. Since the Brexiteers' claim included signing trade agreements with other parts of the world, that process may take up to a decade. Nevertheless, by examining the UK government's plans for Brexit; relating that to the changing terms of state sovereign control in Europe; and drawing on the Norwegian experience as a closely associated non-member; the article has sought to spell out some of the conditions that will bear on the UK's ability to retake control.

The May government pre-election opted for a hard version of Brexit that was explicitly aimed at avoiding 'Norway Model entrapment'. In a sense the 2017 election result put a softer version of Brexit back on the agenda; thus suggesting that Norway's experiences, if not the specifics of Norway's EU affiliation back on the agenda. Scotland is also keeping this option alive, and may seek a differentiated status within the UK if there is a hard Brexit.

This article has shown that the critical issues pertaining to control are not about formal arrangements, but about how closely affiliated a non-member is with the EU. Access to and participation in the common EU institutions are supposed to make up for the loss in self-control. A state that opts out of this critical structure cannot escape the reality of mutual interdependence and how the EU has altered the reality of control in Europe. In this context, the main issue is not whether 'the Norway Model' is suitable; the question is the type and range of EU norms and rules that the state subjects itself to. The closer the association it seeks, the more it becomes a rule-taker, and the greater the pressure for norm contiguity (across issue-areas). The Great Repeal Bill converts EU law into UK law and therefore *sustains* an EU imprint post-Brexit. Whether that will yield the predictability and rule/norm contiguity that large sections of the UK seek depends on how the UK relates to this body of rules/norms over time. In any case, Brexit will be everything but a clean break from EU rules and norms. The UK government will face strong domestic pressures to *ensure* that the relevant rules and norms remain EU-compatible.

The discussion of the terms of control in contemporary Europe for heavily EU-encoded states such as the UK and Norway must pay heed to how the logic of norm-adaptation affects – conditions and constrains – political bargaining and power. The notion of 'control' is steeped in power political language, but sovereign control brings up the role of norms because sovereignty is a normative concept. The considerations that animate norm adaptation are about the predictability of norms; the contiguity of norms; and the appropriateness and justifiability of norms and rules. For these reasons norm adaptation is likely to render bargaining strength less fungible. A more systematic effort is needed to clarify the relationship between norm adaptation and bargaining in the Brexit process.

The Brexit process will likely exhibit a significant tension between functional and normative aspects of norm and rule compliance in the UK, as a consequence of the significant gap between the facts and norms of sovereign control. That has bearings on political leadership. UK governments are prone to allegations of double-talk and hypocrisy. They risk normative entrapment the more they link Brexit to full independence; allegations of betrayal the closer they align themselves with the EU.

Finally, on the terms of democratic control, even if the elections place the Parliament in a more prominent role in the negotiations, the GRB will likely be a government-run process. In addition, and notably, a closely associated non-member will struggle to find a logical place for Parliamentary sovereignty, as Norway's experience has shown.

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