Fragmentation or Disintegration? The Impact of Devolution, Brexit, and the Scottish Independence Movement on UK and EU Citizens' Social Rights

Keith Puttick*

Introduction

Despite the decline of Beveridge's influence in the development of recent social welfare programmes in the UK, many of the 'basic structures' in his report remain (Beveridge, 1942; Harris, 2000: 87). The legacy is greater than that, though. Having captured the popular imagination with ideas like 'cradle-to-grave' support, and slaying the Giants of welfare - Want, Idleness, Disease, Ignorance, and Squalor – the report acquired a wider audience after its publication, and contributed to newer models and typologies developing after the more established systems (Esping-Andersen, 1990; 1996). As a source of social cohesion and macroeconomic stability the schemes it generated provided many of the elements needed in an effective 'floor of social protection' (Bachelet, 2011: 6).

For present purposes, Beveridge also provided a unifying point in the development of a social union between the United Kingdom's four countries. Testament to this was the enthusiasm with which the report was met nation-wide (Timmins, 2001: 23), and what for a long time seemed to be a powerful consensus on what 'social security' should mean.

The ability of people anywhere in the UK to access welfare support, including health care from the jewel in the Welfare State crown - the National Health Service - served to promote a sense of common identity based on the three components of citizenship – civil, political, and social – identified by T.H. Marshall in his epic work on citizenship and class (Marshall, 1950), and informed a more recent understanding of citizenship as a unifying concept (Rees, 2016: 4). Interestingly, the Commission on Devolution in Wales in 2014 commented that 'a common level of social protection for all our citizens is fundamental to the continuation of the UK' (Silk Commission, 2014). Some commentators have gone much further, though, talking about such features of the Welfare State providing *shared* social citizenship, and as providing an 'agent of cohesion' (Béland and Lecours, 2011: 137), an 'essential component of Britishness', and a 'strong focus of attachment'. Arguably, however, that shared social citizenship has come increasingly under threat began with some of the more contentious programmes introduced by New Labour, and more recent and in some cases highly controversial changes under Conservative-led coalitions, such as measures like the 'bedroom tax' - a system of reducing housing costs support if a property is under-occupied (Mullen, 2014: 638). More recently and, again, controversially - particularly in countries like Scotland and Northern Ireland which voted Remain in the EU referendum - a Conservative-Democratic Unionist Party alliance seems intent on engineering a 'hard' Brexit, signalling the possible start of new initiatives post-withdrawal for dismantling gains and rights from the EU as citizens' other social union.

Unfortunately the mechanisms currently being put in place by the UK's European Union (Withdrawal) Bill 2017 provide some ready-made mechanisms, including extensive ministerial law-making powers, to facilitate such a Brexit and roll back a range of social rights.

*Associate Professor of Law, Staffordshire University, UK e: k.a.puttick@staffs.ac.uk

In the UK context much is made of regional differences and a 'North-South divide' as shorthand for a growing range of cultural, economic, and social differences within the UK (Martin: 390; Rowthorn, 363). Coupled with this is a growing concern about the negative impact of cut to welfare provision on regions like Wales and Scotland, given their higher dependency on social security benefits than other parts of the UK. Research for the Welsh Assembly has indicated, for example, that 'Wales has the highest take-up of welfare support in Britain, with nearly 19 per cent of the working age population on benefits, compared to the British average of 15 per cent' (Johnson, 2016). Furthermore, one of the biggest proponents of further devolution to Wales, the influential Bevan Foundation, has pointed out how the Commission on Empowerment and Responsibility when examining the scope for further devolution for Wales recorded that expenditure on social protection is 13% higher per head than the UK average (Bevan, 2016: 9). In the Scottish context similar disparities have also become a powerful a potent element in the narrative, as is the argument that a more distinctly 'Scottish' blue-print for social security will deliver a better, fairer system for Scotland (Scottish Government, 2015; Scottish Government, 2016; Scottish Parliament, 2017).

If Westminster welfare reforms, often driven by the austerity and spending targets shaped by constraints in the Budget Responsibility and National Audit Act 2011 and Charter for Budget Responsibility (the UK's equivalent of EU fiscal compacts in the Treaty on Stability, Co-ordination, and Governance embedded in Member States' systems: Craig, 2012: 232; Prosser, 2016: 113), are the 'problem' then the perceived solution and response from the devolved institutions – especially in Edinburgh - has been measures at a devolved level to mitigate the impact of such austerity. Besides the perception that poorer UK regions are bearing much of the brunt of austerity, there are some clear ideological battles to be fought out. As some commentators have suggested, the ability to deploy devolved powers in countries like Scotland provide useful opportunities to demonstrate distinctiveness as part of a 'nationalist mobilisation' - especially if progressive social legislation accords with 'Scottish egalitarian values' (Béland and Lecours, 2011: 140; McKewen, 2002: 79).

Arguably, the perception that 'local is best' offers another potent dimension to welfare nationalism. Yet, in practice such a deployment of local power does not always produce the outcomes expected. Apart from the difficulties associated with funding of improvements to existing provision – a matter that often remains firmly within the control of central administrations – devolution of power can be inherently problematic. Typically, central governments may see advantages in transferring the burden of responsibility (including political accountability) for welfare programmes. Indeed they may be happy to see such initiatives, especially when the programmes in question are failing or unpopular, or both. One of the schemes Edinburgh has recently partly taken over is the Work Programme, seen by some commentators as one the worst programmes for the unemployed in living memory. Putting many of its worst features right is achievable, but it will be time-consuming and costly. Similar considerations apply to Universal Credit – a point revisited later.

Decentralisation and devolution of power to run programmes can also provide central governments under pressure with a ready means of 'clamping down' on rising fiscal costs. Indeed this may have been a feature of the reforms to social care and support in the Netherlands involving transfers of responsibility from the sphere of national public insurance to the responsibility of municipalities under the Dutch Social Support Act 2007 – most notably in the area of programmes for disabled and younger people (Dijkhoff, 2014: 276).

In neighbouring France a transfer of responsibilities also looks set to be the likely preferred solution which the Macron government is considering in response to the difficulties départements have been experiencing in resourcing costly schemes like the Revenu de Solidarité Active in the face of rising demand (Guichard, 2016). However, the 'transfer' in this case is expected to be the *other* away, ie from regional agencies and to central government. Again, it is a programme which has been controversial, and seen by the Right in the past as a 'failing' scheme (Landre, 2014). The concern is that a transfer to the centre will make it even easier to cut costs, thereby limiting access to the support the RSA gives to millions of citizens as part of wider fiscal economies.

Despite such fiscal considerations, the transference of powers from the centre to the regions with a view to plugging gaps in welfare provision chimes with subsidiarity principles, and the idea that 'local' is synonymous with 'best' - especially when devolved administrations should be expected to have a better grasp on the needs of their constituents (and certainly better than 'remote' central governments). A key problem in practice, though, is that the devolution process can, and often does, give rise to legal as well as political conflicts over 'competence', with the courts becoming key players in shaping outcomes. There may also be issues of legal accountability if powers are perceived by the centre or other stakeholders as mis-used. The UK has had more than its fair share of such conflicts, historically.

This has no doubt played a part in the legislature trying to lay down clear parameters between so called 'devolved' and 'reserved' matters (as can now be seen in the carefully drafted provisions of the Scotland Act 1998, s.29 and Schedule 5: most recently revised in 2016).

The scope for judicial intervention was seen, for example, in cases generated by the 1920s Poplarism movement. In this period Labour Party-led local governments had sought to implement improved welfare schemes, including the creation of jobs for which equal pay for equal work principles were implemented. Given the increased costs involved this inevitably brought local administrations into conflict with central government, prompting ministers and judges to brand aspects of Poplarism as 'socialist philanthropy gone mad' and 'irrational' in legal terms. Many initiatives ended in major court battles for nearly a decade, most of which were won by central government, typically on the basis that municipal powers were being used for improper purposes.

Cases could produce some high-level casualties, including future Labour Prime Ministers like Clement Attlee who was sent to jail with other East London local government leaders for refusing to back down over schemes deemed by the courts to be unlawful by the courts (Roberts v Hopwood, 1921). Many of the issues had both a 'class' and a 'geographical' poverty dimension to them; and the ripples quickly spread from Poplar - one of the poorest areas of London - to other areas of the UK including Wales and Scotland (Johnson, 2000).

In the rest of this paper it is proposed to consider the way devolved governments in the UK have been making use of devolved powers in the area of social security. Consideration is also given to the extent to which current 'fragmentation' trends, in the sense of shifts of power away from the centre and towards regional and local government (Vonk, 2015: 565), could lead in time to a rather more fundamental disintegration of the current UK regime. The context in which devolved measures, especially those like the Social Security (Scotland) Bill 2017, needs to be considered.

Austerity, Divergence and Devolution

UK welfare schemes have been particularly hard-hit since at least 2010 by a series of austerity-led measures from Westminster, including 'freezes' on annual benefits upratings, replacement of major programmes in the areas of disability and incapacity support, and cuts to budgets for Community Care programmes. Among the schemes experiencing a cut in the value of support have been entitlements delivered as part of the government's flagship measure, Universal Credit (Browne et al/IFS, 2016; Finch/Resolution Foundation, 2016; Puttick 2017b). Inevitably this has impacted on living standards and levels of household and in-work poverty (Hood and Waters/IFS, 2017). Furthermore, in response to the perceived unfairness of many of the tougher adjudicatory procedures which have accompanied the changes – vividly and largely accurately portrayed in the Ken Loach film *I Daniel Blake* (Daniel Blake, 2016) - it is entirely unsurprising that devolved governments like Scotland's have tried to hit back. A significant priority has been to try to plug the gaps left by those cutbacks – whether through income 'top-ups' or newer schemes; and also to remedy such perceived failings in the adjudication systems, many of them seen as increasingly illiberal in areas like active labour policies, conditionality and sanctioning – possibly following similar trends elsewhere in Europe (Vonk, 2014: 194). Indeed, it is this context that makes Scotland's ability under recently devolved powers to provide such supplementary and additional support particularly intriguing. Perceived unfairness in adjudication measures has also featured strongly in reforms.

Tensions about the UK government's programmes have undoubtedly been a major factor prompting Scotland to produce its own, distinctly 'Scottish' blue-print for social security (*A New Future for Social Security in Scotland*, March 2016). That agenda has now been assisted by the new powers in the Scotland Act 2016. Whilst the original devolution settlement in 1998 provided little by way of devolved power in the Social Security area – Social Security remained a largely 'reserved' area for both countries - the Scotland Act 2016 has transformed the position. The Act was a by-product of the Scottish Independence referendum, and a last minute commitment given by the leaders of the UK's main political parties - just before the independence vote was taken - to grant further devolution for Scotland if voters voted 'no' to independence. They duly obliged, and the Smith Commission was promptly set up to see how that commitment should be honoured.

In the event, the commission recommended a sizeable tranche of devolution measures in the Social Security area (Smith Commission, 2014: Heads of Agreement Pillar 2 *Delivering Prosperity, A Healthy Economy, Jobs and Social Justice* 42-62). Among other things, Smith recommended that important aspects of the social security system, including key benefits like Universal Credit, the under-occupancy restriction (aka Bedroom Tax), and disability, incapacity, and care benefits – all bêtes noires as far critics of Conservative programmes are concerned – should be devolved. Furthermore, and even more remarkably, the Scottish Parliament gained powers to create top up benefits to alleviate some of the more significant impacts from schemes 'reserved' to the UK. It was also given control over key matters like unemployment support programmes and the operation of 'core employment support services' (Smith Commission 2014: 54-57) - albeit subject to funding principles and constraints 'top up' benefits which remain 'reserved' to the UK.

Consequently, the Scottish Parliament has been introducing a range of initiatives on the back of the Smith Commission – initiatives which straddle both adjudicatory and substantive matters.

Needless to say this extension of devolution has not gone unnoticed in the other countries of the UK. In the case of Wales, for example, the primary contention has been that such further devolution is now necessary to cater for distinctly 'Welsh' problems, and to reverse the perceived unfairness of expenditure appearing to be lower in Wales than in England, and with decreases being seen as greater (Bevan, 2017: 11). Not unreasonably, though - now that greater powers and welfare rights have been extended to Scotland - the question has been asked in the *other* devolved institutions why social security claimants in one part of the UK, Scotland, should acquire improved support? Similar questions have been asked in the aftermath of the agreement between the Conservative Party and the Democratic Unionist Party in Northern Ireland under which Northern Ireland will receive significant advantages, including added assistance with social programmes, as part of the deal by which the DUP will support the Conservatives keep power at Westminster until 2022.

In the case of Wales, tensions have, in fact, already been simmering below the surface for some while, and across a range of social welfare programmes and labour market support provision. In a case frequently held up as an example of London 'high-handedness', in furtherance of one of the Conservative-led Coalition government's deregulatory policies – removal of legally enforceable sectoral minimum wage floors – the government secured Westminster legislation in 2013 abolishing the Agricultural Wages Board for England and Wales. The problem was that Wales, and the majority of Welsh farmers and trade unions in the Welsh agricultural sector, not only did not want the board abolished - it was seen as a necessary and important means of maintaining fair minimum wages and conditions in the sector, and a way of containing the State welfare costs that would be incurred if wage levels fell as a result of abolition - it had put in place its *own* new version of the board as a replacement for existing arrangements. Despite protests from the Welsh government and the key Welsh stakeholders, London insisted on the abolition process continuing. Indeed, it denied Wales had any right to legislate on what it saw as the 'reserved' area of Employment. In the event, the matter went to the UK Supreme Court where Wales won the argument (UK Supreme Court, 2014).

Northern Ireland, too, has been increasingly assertive in its dealings with London, most significantly when it rejected one of the UK central government's most far-reaching welfare reforms in 30 years, the Welfare Reform Act 2012, thereby disregarding the 'parity' convention whereby Northern Ireland legislates to produce rules which mirror Westminster legislation (Simpson, 2017: 1). The reasons for that rejection are complex, and the UC scheme was eventually implemented: but it is likely that it was informed by studies into the likely negative impact of schemes like Universal Credit, including those of the Institute of Fiscal Studies (Browne and Roantree, 2013), specific aspects like cuts to support for the low-paid (Puttick, 2016; 2017b); and a wider-ranging dissatisfaction with the Coalition government's welfare and spending policies (Simpson, 2017: 4).

Despite rejection of the proposed break-away from the UK in the Scottish independence referendum, the independence debate has continued – spurred on to a great extent by the Brexit referendum outcome. The Scottish National Party (SNP) government argued strongly in the aftermath of the Brexit decision that this triggered a need for a *second r*eferendum on independence given that the Scottish people had voted decisively for 'Remain', and Westminster was planning to give them something they really did not want. It argued robustly that Brexit would have a disproportionate and negative impact on Scotland in terms of potential loss of jobs, trading opportunities, and inward investment.

Again, the social agenda featured strongly. In line with Remain arguments from other parts of the UK, Scotland has been clearly articulating the value of a beneficial, second-tier EU 'social union': one in which key social rights are more 'secure' and embedded than many of those at the domestic level.

Whilst in many ways the Social Europe part of the EU project has been disappointing in recent years, the impact it has had in supplementing the UK's domestic programmes must not be under-estimated, particularly in key areas like rights at work, Working Time, Equalities, Acquired Rights, and rights linked to free movement (from which UK nationals have benefited as much as EU nationals). Furthermore, the opportunity to continue to participate in a Social Europe in the future, offering further gains, appears to have chimed strongly with voters.

Unsurprisingly, therefore, the SNP government in Edinburgh has argued robustly since the Brexit vote that leaving the EU – particularly with a hard Brexit – is thoroughly bad news, and likely to impact disproportionately hard on Scotland in terms of potential loss of jobs, trading opportunities, and inward investment. The argument featured strongly in the SNP manifesto at the 2017 General Election.

Nevertheless, the case for a second independence referendum suffered a set-back in the 2017 election when the SNP suffered electoral reversals. So plans for such a referendum have been put on hold. However, this has not dampened enthusiasm - either among SNP supporters or more widely across the political spectrum - for reform of key welfare institutions and programmes. In any case, both the Smith Commission and the UK Parliament itself - by securing enactment of the Scotland Act 2016 - gave the legitimacy needed for some key changes in Scotland.

Accordingly, this year the SNP government in Edinburgh, having been given the green light to proceed to the next stage in the narrative, began the process of enacting enactment the Social Security (Scotland) Bill 2017 (the 2017 Bill).

An Emerging 'Scottish' System?

The 2017 Bill undoubtedly marks a decisive next step in the evolution of what could, in time, become a distinctly Scottish social security system. That said, it would be wrong to say that divergence between the social security systems of each of the UK's countries is necessarily *new*. Pre-Beveridge there were points of divergence, some of them displaying 'progressive' features: others less so. Following the Report of the Royal Commission on the Scottish Poor Law (1844) important changes were made by the Poor Law Amendment (Scotland) Act 1845 and support, within a more closely regulated system of benefits in cash and kind by parish boards to needy claimants who could show they were resident and legally 'settled'. Whilst much of this mirrored the social security law system in England and Wales (Mitchinson, 2000), rights in the adjudication process went further – for example by providing claimants with a right of appeal to a court, both in respect of the correctness of decisions and the scale of relief provided. Those who were dissatisfied with the kind of relief offered, or the amounts, could contest decisions before Scotland's Board of Supervision (later the Local Government Boards), and Sheriffs Courts had the power to order kirk sessions and heritors to reconsider decisions and make new decisions.

Powers in the 1845 Act made it clear that claimants without an established `settlement' could be refused support. Furthermore, Irish and English claimants without such a settlement in Scotland could be forcibly removed (Puttick, 2017a: H1). In this respect, the Scottish Poor Law could be harsher than that in England where, in 1803, the courts decided a foreign national and his family was entitled to support on the basis of the 'law of humanity' (Eastbourne Case, 1803) – a useful source of support for groups like asylum seekers and 'overstayers' until the 1990s.

Relief for destitute claimants, including those affected by cyclical famine, rural poverty, and the devastating impacts of the Highland 'clearances' (Prebble, 1963: 170-180) was assisted, too, by Scotland's Destitution Board system - a system of relief based on a hybrid mix of State funding and private subscriptions (arguably an early forerunner of workfare as it looked to able-bodied claimants to reciprocate by providing unpaid labour). Whilst not perfect it offered a lot more than available in other parts of the country, especially Ireland during the mid-19th century years of the Great Hunger.

In more recent times Scotland has made provision in areas like healthcare, social services, and children's palliative care not provided for elsewhere in the UK. These include free health prescriptions for all those needing medicines, and free personal care and subsidised travel costs for older people. Besides rejecting charges for higher education it has been clear about the importance of retaining local government control, as opposed to permitting 'privatisation', in key areas like domiciliary social services. The latter points undoubtedly represent a notable difference in comparison with the experience of citizens in England and the rest of the union (Mullen: 638). Added to that there have been marked differences of approach between the courts in their application of the law in areas like Community Care provision – for example in Scottish courts' refusal to accept that making older citizens should have to go on to waiting lists before social services can be provided is lawful (Lanarkshire CC Case, 2001). The 2017 Bill, however, has now opened up significant new opportunities to deploy devolved powers to start constructing improvements; and it is against this background that the Bill can now be considered.

The Social Security (Scotland) Bill 2017

The legislation comes after consultative processes and published aims (Scottish Government 2015; 2016). The headline news is that the legislation transposes no less than eleven key social security benefits on to a 'Scottish legislative platform''. The enabling legislation gives Scottish ministers significant powers, using secondary legislation, to 'shape a distinctly Scottish benefits system, with dignity and respect being core to its approach'. A fuller account of the scheme is provided in the Bill's Policy Memorandum and Explanatory Notes (Scottish Parliament 2017a; 2017b) but the scheme, in outline is focused on providing a common, unified process for demonstrating eligibility for assistance. This is the planned position whatever the particular benefit sought – an approach designed to overcome the 'lack of clarity and confusion' the government says pervades current claims and adjudication processes. The explanation for expecting detailed rules to be put into subordinate legislation rather than in primary legislation is that 'the rules will have to change from time to time to reflect changes in economic and social conditions', and 'putting the rules entirely in primary legislation would not allow for this, and would impair their responsiveness to circumstances' (Scottish Parliament, 2017a: 11). Some critics have said the move is an attempt to avoid scrutiny in

the legislature. It is clearly the case, though, that much of the current UK regime also relies heavily on secondary legislation.

The Bill caters for a lot more, though, than just a re-working of the initial tranche of social security law, much of it focused on disability and incapacity benefits, and carers' assistance. It also re-works the adjudication processes which are to operate, assisted by a set of core principles and a 'charter of rights' setting out what can be expected in the design and delivery of a Scottish social security system (Bill, ss.1-7): and there is an overriding duty on ministers to 'give assistance following a determination of entitlement.

Part of that process, and what is termed 'on-going entitlement', is aimed at maintaining 'uninterrupted support' when there is no good reason to discontinue assistance. The aim is to avoid some of the current 'stop/go' interruptions to support that often characterise the current UK-based regime (Policy Memorandum, 24-27).

In substantive terms the first tranche of legislation provides for a re-working of assistance in a number of key areas: disability and care benefits, cold weather and winter heating supplements, early years support, assistance after industrial injuries, and discretionary housing help (Bill, ss. 8-18).

Other innovative features include the ability of decision-makers to determine entitlement without a specific claim if the relevant agency already holds sufficient information to determine an individual's entitlement': a change which undoubtedly cuts across existing requirements, including the general requirement that eligibility can normally only begin once there has been a claim and adjudication (Social Security Administration Act 1992, s.1).

Arguably one of the most contentious aspects of the scheme is the ability of Scottish agencies under the new legislation to 'top up' the payments to a person who is entitled to a 'reserved' benefit. The only caveat, and it is one which does not appear to pose any great limitation, is that 'the person must appear to need additional assistance for a purpose for which the reserved benefit is provided'. In this case the scope of such 'top-ups' will be in regulations (Bill, ss.45. 46). Otherwise, provision can be made to supplement payments in other key areas like Carers Allowances (Bill, s.47). Among other things this is designed to close the current gap between the rates at which Carers Allowance is paid and the rate of more advantageous benefits like Jobseeker's Allowance. Support may also be provided which supplements housing costs when local authorities in Scotland decide this is necessary.

In political terms, the areas in which the new provisions will attract the most support will undoubtedly be those which mitigate the effects of the more controversial aspects of Universal Credit including the ability to change the frequency of income transfers and single household payments, and to pay landlords directly for rent and other housing costs. Similarly, there is power to vary the housing costs elements of UC to overcome the impact of the under-occupancy restrictions (the bedroom tax). The Bill has also sought to address some of the tough external criticism levelled at the cuts made by the UK government, and their impact on 'disadvantaged and marginalised' communities - particularly since the Welfare Reform Act 2012 (UN Report, 2016; Scottish Parliament 2017a: 48).

Conclusions

As this paper has considered, current political trends and legal developments like Scotland's 2017 Bill certainly provide some early evidence of potential fragmentation. The bigger question is whether this could, in time, progress into something more significant: a wider-ranging, more systemic disintegration of the current system and, in time, the UK's social union itself?

The answer to that depends on a range of factors including prospects for the economy, and the extent to which the tensions caused by growing socio-economic disparities between the different parts of the UK intensify. There is also a European dimension to this. Arguably, continued affiliation by the UK to the EU, in whatever form that might take - whether as part of the European Economic Area and Single Market, or on some other, more negotiated and tailored basis – will reinforce the current union, if only by sustaining a shared identity based on Europe. Such continuity is likely to be popular in Scotland, and may even obviate some of the arguments for a second independence referendum. That is still on the cards, even if any immediate likelihood of a further vote receded after the last General Election when the Scottish National Party saw some of its support decline.

Going forward, UK participation in a reinvigorated European Social Union drawing on newer principles of solidarity (Vandenbroucke, 2016), would be an attractive prospect. There is no shortage of perspectives on this, of course. One of the UK's Nobel laureate economists, Paul Pissarides, has argued for some while for a Social State capable of supporting decent quality jobs, assisting with labour market changes and adaptation to new technologies, and maintaining good quality social services to tackle poverty (Pissarides, 2014). A range of new approaches was recently outlined in papers in *A European Social Union after the Crisis* (Vandenbroucke, Barnard, De Baere, 2017).

However, prospects for UK membership, or some looser affiliation short of a hard Brexit, remain uncertain. As well as differences over the costs of the divorce, areas such as free movement and linked social rights remain highly vexed issues. This currently leaves the future social rights, including the status of EU nationals in the UK, in a precarious position (Currie, 2017: 337). Arguably, that concern among 'better together' commentators has been worsening since at least 2015 when all three of the UK's main political parties argued for a two-tier labour market, with less advantageous social rights and access to social security support reserved for EU nationals as 'Team B' players - at least until they satisfied lengthy residence and integration requirements (Puttick, 2015). Unfortunately, and somewhat opportunistically, this seemed to link to anti-immigration and anti-EU positions on the Right, including those on which the UK Independence Party went on to capitalise so effectively in the Brexit campaign. The outcome was not helped some of the obvious misinformation and distortions in which the Leave parties engaged, not least about EU residents' abuse of the UK's welfare system. The editorial board of the Common Market Law Review was particularly scathing, commenting on what it called the 'systematic dishonesty' deployed by the Leave campaign – something which extended to pretty well every aspect of the referendum campaign (CMLR, 2016).

Revelations of the government's draft plans for post-Brexit immigration controls suggest that the gulf over free movement between UK and EU Article 50 negotiators is still wide (Hopkins and Travis, 2017; Hopkins, 2017). Yet despite the plans' likely popularity with many Brexiteers, the position of the government – even with the help of Irish Democratic Unionist Party MPs - remains weak in the

UK Parliament. Indeed it is not even clear that the EU (Withdrawal) Bill 2017 in its originally proposed form can be approved, at least without significant modification.

Among the thornier issues to be addressed is a dispute about the extent to which EU laws and powers from Brussels should be repatriated more directly to the devolved institutions rather than indirectly via Westminster: something also seen as providing some necessary insurance against a risk of future rolling back of social rights by London.

Watch this space!

Keith Puttick
Staffordshire University, UK

REFERENCES

Bachelet Report (2011) *Social Protection Floor for a Fair and Inclusive Globalisation*: Report of the Advisory Group Chaired by Michelle Bachelet, International Labour Organisation (ILO) and the World Health Organisation, Geneva: ILO

Béland, D and Lecours, A 'Nationalism and Welfare State Politics in Belgium, Canada, and the United Kingdom' in Suszycki, A (ed) (2011) *Welfare Citizenship and Welfare Nationalism*, Helsinki: NordWel Studies in Historical Welfare State Research

Bevan (2017) *Making Welfare Work for Wales- Final Report*, June 2016 (Cardiff: Bevan Foundation/J Rowntree Foundation)

Beveridge, W (1942) *Social Insurance and Allied Services* (Cmd 6404, Report by Sir William Beveridge: The Beveridge Report)

Browne, J and Roantree, B (2013) Universal Credit in Northern Ireland: What will its Impact be, and What are the Challenges?' London: Institute of Fiscal Studies, IFS Report R77

Browne, J et al (2016) *Institute of Fiscal Studies Green Budget 2016*: Chapter 10 'The Changing Effects of Universal Credit', London: Institute of Fiscal Studies

CMLR (2016) *Statement from the Editorial Board of the Common Market Law Review Regarding the UK Brexit Referendum Campaign*, 20th June 2016

Craig, P (2012) 'The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism': European Legal Studies Research Paper 47/2012 (2012) 37 *European Law Review* 231

Currie, S (2016) 'Reflecting on Brexit: Migration Myths and What Comes Next for EU Migrants in the UK? *Journal of Social Welfare and Family Law*, Volume 38, Issue 3, 337

Daniel Blake (2016) *I Daniel Blake*, Author: Paul Laverty. Film: BBC Films/BFI, Director Ken Loach: http://www.bbc.co.uk/bbcfilms/film/i_daniel_blake

Dijkhoff, T (2014) 'The Dutch Social Support Act in the Shadow of the Decentralisation Dream', *Journal of Social Welfare and Family Law*, Volume 36, Issue 3, 276

Eastbourne Case (1803) *R v Inhabitants of Eastbourne* (1803) 102 ER 769

Esping-Andersen, G (1990) *The Three Worlds of Welfare Capitalism*, New Jersey: Princeton University Press

Esping-Andersen, G (1996) *Welfare States in Transition: National Adaptations in Global Economies*, London: Sage Publications

Finch, D *Universal Challenge: Making a Success of Universal Credit*, London: Resolution Foundation, May 2016

Guichard, G (2016) 'Departments Trapped by the Soaring RSA', *Le Figaro Economie* 24 March 2016

Harris, N (2000) 'Beveridge and Beyond: The Shift from Insurance to Means-Testing' in Harris, N Social *Security Law in Context*, Oxford: Oxford University Press, 2000

Harrop, A 'The Beveridge Report: Eight Lessons for Today', Fabian Society 25th May 2012 http://www.fabians.org.uk/the-beveridge-report-eight-lessons-for-today/

Hood, A and Waters, T *Living Standards, Poverty and Inequality in the UK: 2016-17 to 2021-22*, London: Institute of Fiscal Studies/J. Rowntree Foundation, 2017

Hopkins, N and Travis, A (2017) 'Leaked Document Reveals UK Brexit Plan to Deter EU Immigrants', *The Guardian* 5th September 2017 https://www.theguardian.com/uk-news/2017/sep/05/leaked-document-reveals-uk-brexit-plan-to-deter-eu-immigrants

Hopkins, N (2017) 'Post-Brexit Immigration: Ten Key Points from the Home Office Document, *The Guardian* 5th September 2017

Johnson, A (2000) 'The Making of a Poor Peoples Movement: A Study of the Political Leadership of the Poplarism Movement' in Lavalette, M and Mooney, G (eds) *Class Struggle and Social Welfare*, London and New York: Routledge

Johnson, H (2016) 'The State of Welfare', Cardiff Bay: Research Service Series for the Welsh Assembly

Lanarkshire CC Case (2001) *R v S. Lanarkshire CC, ex parte MacGregor* [2001] 4 CCLR 188; 2001 SLT 233, Scottish Court of Session

Landre, M (2014) 'Five Years On, the RSA Is a Failure', *Le Figaro Economie*, 1 June 2014

Mai, Verena Maria (2013) *The Capacity of Welfare Regimes to Absorb Macro-Economic Shocks: National Differences in the Development of Unemployment, Poverty and the Distribution of Income in*

the Aftermath of the Financial Crisis 2008 (Sweden, Austria, Spain), Hamburg: Anchor Academic Publishing

Marshall, T. H (1950) *Social Citizenship and Class and Other Essays*, Cambridge: Cambridge University Press

Martin, R (1988) *The Political Economy of Britain's North-South Divide*, Transactions of the Institute of British Geographers (1988) Vol 13 No. 4, 389

McEwen, N (2002) 'State Welfare Nationalism: The Territorial Impact of Welfare State Development in Scotland', Regional and Federal Studies, Vol 12 Issue 1, Spring 2002, 66

Mitchinson, M (2000) *The Poor Law in Scotland: The Experience of Poverty 1574-1845*, Edinburgh: Edinburgh University Press

Mullen, T (2014) 'The Scottish Independence Referendum', *Journal of Law and Society* Vol 41 (4) 627

Pissarides, P (2014) *Social Europe in a Climate of Austerity*, Eurofound Conference, Athens 23rd June 2014, *Social Europe Journal* (June 2014)

Prebble, J (1963) *The Highland Clearances* , London: Martin Secker and Warburg

Prosser, T (2016) 'Constitutionalising Austerity in Europe' [2016] *Public Law* (January 2016), 111

Puttick, K (2015) 'EEA Workers' Free Movement and Social Rights after Dano and St Prix: Is a Pandora's Box of New Economic Integration and 'Contribution' Requirements Opening?' *Journal of Social Welfare and Family Law*, Volume 37, Issue 2, 253

Puttick, K (2016) 'The Challenges for Labour Law and Social Security Systems at the Labour-Social Security Interface', conference paper at the ISLSSL XXI World Congress of Labour Law and Social Security, Capetown, published in Blainpain, R, Hendrickx, F, Du Toit, D (eds) *Labour Law and Social Progress: Holding the Line or Shifting the Boundaries*, [2016] *Bulletin of Comparative Labour Relations*, Vol 92, Alphen aan den Rijn: Kluwer International BV

Puttick, K (2017a) 'State Benefits and Tax Credits', Section H, Section 1 in Fotheringham, J (ed) Butterworths Scottish Family Law and Service, London: LexisNexis

Puttick, K (2017b) 'From Mini to Maxi Jobs? Low Pay, 'Progression' and the Duty to Work (Harder)', Forthcoming

Rees, A (2016) 'T.H. Marshall and the Progress of Citizenship' in Rees, A and Bulmer, M (eds) *Citizenship Today: The Contemporary Relevance of T.H. Marshall*, London: Routledge

Roberts v Hopwood (1925) *Roberts v Hopwood* [1925] AC 578; 23 Logal Government Reports 337

Rowthorn, R (2010) 'Combined and Uneven Development: Reflections on the North-South Divide', Journal of Spatial Economic Analysis, Vol 5, 2010, 363

Scottish Government (2015) *Creating a Fairer Scotland: Social Security the Story So Far and Next Steps*, Scottish Government, October 2015

Scottish Government (2016) *A New Future for Social Security in Scotland*, Scottish Government, March 2016

Scottish Parliament (2017a) Social Security (Scotland) Bill *Policy Memorandum*, SP Bill 18-PM, Session 5 (2017a)

Scottish Parliament (2017b) Social Security (Scotland) Bill *Explanatory Notes*, SP Bill 18-PM, Session 5 (2017)

Silk Commission (2014) *Empowerment and Responsibility: Legislative Powers to Strengthen Wales* (Comisiwn ar Ddatganoli yng Nghymru) Cardiff: Office of the Commission on Devolution in Wales, 2014

Simpson, M (2017) 'The Social Union after the Coalition: Devolution, Divergence, and Convergence', *Journal of Social Policy* 1

Smith Commission (2014) *Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament*, 27 November 2014, Edinburgh: Smith Commission Secretariat

Timmins, N (2001) *The Five Giants: A Biography of the Welfare State*, London: Harper Collins

UK Supreme Court (2014) *Agricultural Sector (Wales) Bill: Reference by the Attorney General for England and Wales* [2014] UKSC 43

UN Report (2016) Letter of the UN Special Rapporteurs on Housing, Disabilities, Poverty and Food and UN Committee on Economic, Social and Cultural Rights 6th Report, July 2016, Geneva: United Nations, 2016

Vandenbroucke, F (2013), *A European Social Union: Why We Need it, What it Means*, Rivista Italiana di Politiche Pubbliche, 2/13, pp. 221-247

Vandenbroucke, F, Barnard, C, De Baere, G (2017) *A European Social Union after the Crisis*, Cambridge: Cambridge University Press

Vonk, G (2014) 'Repressive Welfare States: The Spiral of Obligations and Sanctions', European Journal of Social Security' 16(3) 188-203

Vonk, G (2015) 'The Land of Four Quarters: The Future of European Social Security Law' in Pennings, F and Vonk (eds) *The Research Handbook on European Social Security Law*, ch.22, pp. 561-574