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SPECIAL ISSUE ARTICLE

Brexit Sovereignty and its Dead Ends

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Abstract

In more ways than one, the Trade and Cooperation Agreement (TCA) concluded by the EU and the UK is a typical trade agreement. Its commitments are international in nature; its provisions create no directly effective rights and obligations for private parties to enforce under domestic law. The TCA thus turns from the central innovation of EU law, an innovation, which also lies at the heart of the Single Market. It is a price the UK is willing to pay for throwing off what it considers the yoke of EU law. This is not out of tune, perhaps, with a wider popular pushback against globalisation and the institutions perceived to represent it. But has Brexit truly returned control of its own laws to the UK, in both a formal and a practical sense? This article analyses the TCA as a balancing act between the parties' 'right to regulate' and the EU's demand of a level playing field, the 'Brussels effect' likely to constrain British attempts in the direction of regulatory divergence, and what has become of the formal effect of EU law in the laws of the UK.

1 | INTRODUCTION

It has finally happened. Nearly 5 years after the Brexit referendum, the UK has taken back control of its own laws by exiting, on 1 January 2021, the transition period set up by the Withdrawal Agreement (OJ C 384 I, p. 1, WA). EU law no longer applies, and nor does the jurisdiction of the European Court of Justice (ECJ). Those are the headlines that Leavers embrace as making good on the Leave campaign's promises. The full force of EU law is gone, and instead comes what is primarily a trade relationship between what the UK government likes to denote as 'sovereign equals' (Frost, 2021). The Trade and Cooperation Agreement (TCA) is indeed, in many respects, a run-of-the-mill trade agreement, whose commitments are located on the international plane, and whose provisions have no direct effect (OJ L 149, p. 10, WA). The UK turns away from the central EU legal innovation, namely that an international treaty creates directly effective rights and obligations for private parties, which they can enforce under domestic law (Van Gend en Loos v Nederlandse Administratie der Belastingen, 1963, Case 26/62). This innovation lies at the basis of the integrated market the EU has created, and from which the UK also turns away; but the latter much more grudgingly, it would seem. The move away from internal market membership, which could have been maintained through participation in the European Economic Area, is a price the UK is willing to pay for throwing off the yoke of EU law. The fact that this is a price, and not a gain, is exemplified by the Global Britain project, which aims to find more trade and business on more distant shores. At least in economic terms, the Brexit project was never an overtly protectionist one. It is, at its heart, a project of 'taking back control', and of 'making our own laws' – often even expressed by the much more august notions of sovereignty and independence. Nevertheless, Brexit may also be seen to transcend British idiosyncrasies, and to be part of a bigger trend of popular pushback against

the forces of globalisation which are perceived to be assisted by international institutions and organisations.

The completion of this Brexit phase[1] offers a good opportunity to assess the extent to which Brexit has indeed returned control of its own laws to the UK. It is not the purpose of this paper to conceptualise Brexit sovereignty (see Elliott, 2020), let alone sovereignty generally. What I mean here by Brexit sovereignty is the UK's ability to take back control, that is, to be no longer bound by EU policies and laws, in both a formal and practical sense. The argument I want to develop is that this project risks meeting its inherent as well as contingent limits in what could be called a number of dead ends.

The substantive focus of this paper is on trade and economic relations between the UK and the European Union, and on the future relationship between UK law and EU law. The assessment is in three parts. I first look at the difficult balancing act, in the TCA, between the parties' 'right to regulate' and the EU's demand of a level playing field. I then look at the so-called 'Brussels Effect', which will significantly constrain Brexit sovereignty. Lastly, I look at what has become of the formal effect of EU law in the laws of the UK: more than meets the eye.

2 | RIGHT TO REGULATE AND LEVEL PLAYING FIELD: A DIFFICULT BALANCING ACT

The UK's conception of Brexit, particularly after Prime Minister Boris Johnson took the reins, is one in which there is little or no place for shared laws and regulations between the EU and the UK. The goal of removing any role for the ECJ (at least in the TCA) pushed the negotiators to frame the future trade relationship with as little reference as possible to extant or future EU law. In this respect, the UK's goal was reinforced by the principle of the autonomy of EU law. As is well known, that principle does not tolerate the incorporation of EU law in an external agreement, or even the close copying of EU law, if the ECJ cannot be given the final say about the interpretation of the relevant EU law provisions (Eckes, 2020). The result is remarkable, in that the TCA hardly references EU law and EU law instruments at all. Its provisions need to be juxtaposed to 'internal' EU law, even in areas where the TCA's aim is clearly to be closely aligned with EU law. The provisions on subsidies offer a good example: they are arguably a state aid regime masquerading as a more standard subsidies regime (like the World Trade Organization (WTO) regime (Peretz, 2020)).

Overall, however, the UK resisted alignment (or convergence), and the result is a shallow trade agreement. To the uninitiated reader, the TCA may come across as extensive and complex, but appearances are deceptive. It is really mainly an agreement that removes tariffs in EU–UK trade, and no other trade barriers. It is a WTO-plus agreement, with a small plus.[2] Perspective is important here. In developed economies like the EU and the UK, tariffs are generally low, and are no longer conceived of as a significant protectionist instrument, with the exception of limited products and sectors (mainly agriculture). That has been the case for several decades now. The main barriers to trade are of a regulatory kind, something which every EU internal market lawyer instantly recognises. The EU has responded to this basic feature of contemporary globalisation by creating an entire ecosystem of rules and institutions that aim to overcome those regulatory barriers. In a nutshell, and conscious of the risks inherent in restating the canon, some of the core elements of that system are as follows. First, ECJ case law which accepts that mere regulatory divergence – the fact that member states have different regulations on, for example, the minimum alcohol content of alcoholic drinks (Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, 1979, Case 120/78) – is a barrier to trade. Second, the principle, both in case law and in EU harmonisation legislation, that member states should mutually recognise the validity of their respective product laws and regulations. Third, a programme of EU harmonisation where such harmonisation is needed to remove what would otherwise be permitted barriers (on e.g. environmental or public health grounds) resulting from regulatory divergence. Fourth, the institutional dimension of 'agencification', in the sense of the creation of specialised regulatory agencies at EU level (Chamon, 2016). As I have stated and analysed elsewhere, this could be called the EU's market integration paradigm (Eeckhout, 2018); a paradigm that is also employed in federal states, but not much at all in other international organisations, or bilateral or multilateral trade agreements. The market integration paradigm can be contrasted with the trade liberalisation paradigm. The latter aims to reduce barriers to trade at the border, but keeps distinct and differently regulated markets wholly intact.

As the UK sought to throw off the yoke of EU law, it proved impossible to tackle regulatory divergence in anything but the most minimal ways. Nowhere is this clearer than in the area of trade in services, with financial services as the best example. Intra-EU free trade in financial services, denoted by the term passporting, is dependent on acceptance of the EU financial services rule-book, and of the role of the various European supervisory authorities (ESAs). The slogan, perhaps even ideology, of 'taking back control' precluded the UK's continued acceptance of this rulebook, as did the EU's rejection of any picking of the best cherries of the internal market. The result is

effectively, as Moloney (2021) has demonstrated, a no-deal in financial services.

This minimalist approach to trade liberalisation (which is in reality a return to significant trade barriers) is the result of the UK's goal to take back control. But we should also recognise that the EU, too, seeks to retain control. The concept here is the 'right to regulate', a concept which can be found throughout the TCA (Articles 123(2), 198, 303(4) and (5), and 356). In EU law, it has its pedigree in Opinion 1/17, on the Comprehensive Economic and Trade Agreement with Canada, where the ECJ elevated the EU's right to regulate to a constitutional principle that is part of the autonomy of EU law.[3.] This right to regulate means that the EU should be free to 'determine the level of protection' in a wide range of public policy areas, such as public health, environmental and social policies.

The EU's conception of its own right to regulate was hard to reconcile with its initial demands for dynamic alignment or convergence, as expressed in the political declaration attached to the withdrawal agreement.[4.] Such dynamic alignment was always seen to be unidirectional: for the UK to align with any future, and higher, levels of protection in the EU. The subtext was very much the fear of a Singapore-on-Thames: the idea that the UK would substantially deregulate its economy after Brexit, and would definitely not want to be in tow with more stringent EU regulatory systems. However, the TCA could hardly confirm a right to regulate on behalf of the EU, but not of the UK. This must form part of the reasons why dynamic alignment had to be abandoned.

In fact, the TCA eschews the terms 'convergence', 'divergence' and 'alignment'. But it does have a whole title devoted to 'level playing field for open and fair competition and sustainable development'. Most of the provisions of that title are indeed aimed at ensuring continued alignment of a range of public policies – competition policy (including subsidies), taxation, labour and social standards, environment and climate – and to managing divergence. It must again be noted that this TCA title does not reference, let alone include extant or future EU legal instruments. But that does not mean that the provisions are weak or narrowly focused. Nor does it mean that the UK is able to escape from the constraints of extant EU law. It may be useful to give some examples and to unpack this a little more.

Take the provisions on non-regression in environmental and climate matters. Article 391(2) provides that no party shall weaken or reduce, in a manner affecting trade and investment between the parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period. Those 'levels that are in place', in the UK, are of course mostly determined by EU law. True, the non-regression obligation is limited to cases of lowering which 'affect' trade and investment between the UK and the EU. But 'affecting' is a generous term, and it will not be difficult to show an effect on trade and investment of any significant lowering of standards. That means that in particular the UK's right to regulate is strictly qualified: free to maintain current levels of protection, or to increase them; not free to lower them. I say 'in particular the UK' because the EU is in any event characterised as a kind of upward regulator. As McCrea (2017) has shown, the EU cannot really stand still, and it is difficult to imagine it lowering levels of protection in key policy areas, such as the environment, other than through disintegration.

This kind of non-regression clause is also found in the area of labour and social standards (Art 387(2) TCA). This means that in the important policy fields of environmental protection and labour standards, the UK's right to regulate is by no means a complete one. Any significant attempts at deregulation would be caught by the TCA.

Article 393 offers a further example of the stringent demands in the area of environmental protection. It binds the parties to a number of internationally recognised environmental principles, such as the precautionary principle and the polluter-pays principle. Those principles are of course the cornerstones of the EU's environmental policy, and are set out in the TFEU (Art 191(2) TFEU).[5.] Article 393 does not refer to the TFEU, but references international instruments such as the Rio Declaration on Environment and Development, and the UN Framework Convention on Climate Change. The alignment with core EU law principles is nevertheless striking, and also restricts the UK's right to regulate.

A last example is that, even if the TCA does not incorporate EU law, it extensively references international instruments in the sphere of trade and sustainable development. Chapter eight of the level playing field title is devoted to enhancing the integration of sustainable development, notably its labour and environmental dimensions, in the parties' trade and investment relationship (Art 397(2), TCA). The provisions that follow refer to a whole series of instruments, such as the core labour standards embodied in ILO Conventions (Art 399(2), TCA); the ILO Decent Work Agenda (Art 399(6), TCA); a series of multilateral environmental agreements (Art 400, TCA); the Convention on Biological Diversity and CITES (Art 402, TCA); and FAO and UNCLOS instruments (Art 404, TCA). These are all agreements to which the EU and the UK are already parties, and the TCA parties are not required to join any new or existing agreements. It is nevertheless the case that the referencing and incorporation of these instruments in the TCA also commits the UK to continued respect for the basic principles which those instruments express. Again, that is a significant restriction on its right to regulate. It is remarkable that the UK

accepts one set of intrusive international commitments (non-EU ones) but rejects virtually all references to EU law. The Brexit sovereignty discourse is therefore inadequate for explaining the near dogmatic focus on removing all EU law. There is no attempt at all to remove other international sources of sovereignty-constraining norms.

It is of course one thing to bind the UK to a whole series of principles and provisions in a wide range of public policies; the enforcement of those commitments is a different matter. It is not the purpose of this paper to engage in any depth with the TCA provisions on dispute settlement, and on enforcement and sanctions. This is a complex set of provisions, no doubt at least in part the result of a lack of trust between the Parties in the course of the negotiations. Article 411 on rebalancing is particularly noteworthy. Ultimately, though, the scope for effective sanctions which are capable of inducing a change in conduct is limited by the shallowness of the free trade which the TCA establishes. In the main, a reintroduction of tariffs is what the parties have in their armour. Nevertheless, even if actual enforcement may be precarious, the commitments do have the force of international law and are extensive. They continue to bind the UK to important EU policies, on competition, taxation, environmental protection, and social and labour standards, and preclude it from using subsidies in not too dissimilar ways from the disciplines that EU state aid law imposes on the member states (Peretz, 2020).

On the basis of this initial assessment we may conclude that, as part of a shallow, WTO-plus trade agreement, the UK has accepted extensive commitments on level playing field, which bind it to at least non-regression in significant policy areas. Its right to regulate is formally recognised, but needs to be exercised by either going more slowly or more quickly than the EU in the level playing field areas. It cannot be exercised by way of a wholesale deregulatory exercise or of a fundamental reconsideration of government policies that affect trade and investment. Brexit sovereignty reaches a first dead end here.

3 | THE BRUSSELS EFFECT

The so-called Brussels Effect constitutes the second dead end. As extensive analysis has shown (see Bradford, 2020; Cremona & Scott, 2019; Scott, 2020), EU law spreads its wings beyond Europe because of the size of the EU market and the drive and ambition that characterise the EU as a regulator. Often, EU standards effectively become world standards, because they are embraced by companies aiming to serve world markets. REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) and GDPR are two obvious examples.

In her analysis, Bradford (2020) distinguishes between de facto and *de jure* Brussels Effects. The latter occur when non-EU governments also formally adopt an EU regime, simply because it reflects what companies are asking for, so as to trade well with the EU. She notes that, in the context of Brexit, there is already a *de jure* Brexit effect, regarding, for example, GDPR (Bradford, 2020). It is indeed the case that the UK has fully adopted GDPR, and that the government shows no signs of seeking to abandon it. In fact, at the start of post-transition Brexit, this *de jure* Brussels Effect extends to most EU laws, as the UK withdrawal legislation has kept them on the statute book. This means that, in contrast with other third countries, no active passing of laws which in substance copy EU law is required for the *de jure* Brussels Effect to be at work. The question is rather whether the UK will seek to diverge, for example in an area like financial services. The cost of divergent UK and EU regimes to UK companies seeking to serve the EU's market will be a constant factor, working against divergence.

There is a close relationship here with so-called equivalence regimes which the EU employs. In a number of areas that are not subject to multilateral rules (such as those of the WTO), the EU's internal market regulation requires third countries to show the equivalence of their regimes in order to gain access. GDPR (where the term 'adequacy' is used rather than equivalence) and financial services are prominent examples. In all of those areas, there will be a significant cost to full Brexit sovereignty. The lack of equivalence will amount to a loss of market access, and equivalence means that EU law continues to cast its long shadow.

There can be little doubt that the *de facto* Brussels Effect will extend to UK manufacturers and service providers seeking to export to the EU. It is interesting to hold the TCA up against the Brussels Effect light. As analysed above, the TCA eschews EU law, particularly as regards specific product and market regulations. If, however, UK companies continue to produce in accordance with EU standards, the Brussels Effect will ensure that those companies continue to apply EU law, and do not gain a competitive advantage through the use of different standards. What those companies lose, though, is the automatic market access which comes with trading inside the EU internal market (including the EEA).

The upheaval about exports of shellfish products, which occurred in the early months of the new relationship, exemplifies this loss (Khan & Foster, 2021). Despite the fact that the UK has not changed its regulation of shellfish production, and remains completely aligned with relevant EU law, it is now subject to the EU regime for imports from third countries. That regime bans all imports of shellfish from less clean waters ('type B'). Whereas, before Brexit, UK producers could send their type B produce to France for treatment, because of the

internal market's free movement principles, that opportunity no longer exists. Even the *de jure* alignment does not guarantee continued market access.

Many observers conceive of such episodes as EU intransigence. Where the UK continues to be fully aligned with EU standards, why are there checks at the borders, and bans on certain imports, for health, safety or environmental reasons? Those questions are also constantly raised with respect to the implementation of the Irish Protocol, and the regime it lays down for trade between Great Britain and Northern Ireland.

Yet this is all the inevitable consequence of the UK leaving the EU's internal market. As analysed elsewhere (Eeckhout, 2018), the trade liberalisation and market integration paradigms are fundamentally different. Free, borderless movement of goods and services in the EU internal market is predicated on the formal acceptance of EU law and on participation in the EU legal system. Third countries may well adopt EU standards and have legislation that is aligned or even identical with EU law, but that cannot give them the same level of market access, for a range of reasons. The EU would need to set up an entire apparatus for reviewing alignment across the globe, or else any favours it gives to a particular third country would fall foul of the WTO's most-favoured-nation rule. Even if this were feasible, such favours would, if available for particular sectors or products, invite the infamous cherry picking the EU was so concerned about in the Brexit negotiations. EU member states have to comply with all of EU internal market law – indeed with all of EU law. Giving the same level of market access to a third country, particularly a close neighbour and former member, on a product-by-product or sectoral basis is inevitably seen as improving upon the terms of membership.

The UK is therefore left with an unenviable choice. It may decide to diverge from EU standards, but thereby force its producers to produce to two standards: one for the home market, and one for exports to the EU (de facto Brussels Effect). Or it may decide to remain aligned to EU standards (*de jure* Brussels Effect), but even then, its exports will be subject to third country treatment: the EU will continue to check compliance, and will not offer unfettered access to its market. Here too, Brexit sovereignty reaches a dead end.

4 | THE FORMAL EFFECT OF EU LAW AND OF THE EU-UK AGREEMENTS

The third way in which 'taking back control' proves to be a relative concept consists of the formal effect of EU law in the UK. Under the current agreements, the UK is by no means completely successful in its attempts to throw off the yoke of EU law. Both the withdrawal agreement and the TCA will be relevant in UK domestic law. Those agreements are of course external EU instruments, and are not to be equated to the complete body of 'internal' EU law. It is nevertheless clear that, in a number of ways, they are close relatives to EU law, as the section above on the right to regulate also aimed to show.

There is, first of all, the withdrawal agreement, whose provisions have direct effect and primacy, in much the same way as EU law did in the course of the UK's membership (Art 4, WA). The most significant parts of that agreement, for direct effect purposes, are those on citizens' rights, as well as the Protocol on Ireland/Northern Ireland. The former are destined to become extinct, and their effect in UK law is a function of the longevity of those EU citizens who benefit from the acquired rights which the agreement protects. The provisions of the protocol, however, are intended to endure. They are a 'frontstop', following the UK's rejection of a backstop protocol. Their effect is not confined to Northern Ireland territory. The provisions on customs, trade checks, and indeed state aid may have to be applied in Great Britain too. This is not a minimal set of provisions.

The TCA, on the other hand, emphatically excludes direct effect. It states in Article 5(1) that nothing in the agreement 'shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement or any supplementing agreement to be directly invoked in the domestic legal systems of the Parties'. At first glance, this looks conclusive as to any effect of the TCA in UK domestic law: there should be none. It is therefore remarkable to see that the EU (Future Relationship) Act (EUFRA) appears to be contradicting this TCA instruction. EUFRA is the UK domestic legislation that approves and implements the TCA. In Section 29(1) it speaks to the implementation of the TCA, in the following terms:

> Existing domestic law has effect on and after the relevant day with such modifications as are required for the purposes of implementing in that law the Trade and Cooperation Agreement or the Security of Classified Information Agreement so far as the agreement concerned is not otherwise so implemented and so far as such implementation is necessary for the purposes of complying with the international obligations of the UK under the agreement.

The interpretation of this provision is not straightforward.[6] However, it does lend itself to a reading which would allow the UK courts to give effect to the TCA, even when that means overriding any 'existing domestic law'. The term 'implementing' (the TCA) is not defined. Section 31 confers the power of implementation on any 'relevant

national authority', and states that it can be exercised by way of regulations. That is a clear reference to the executive. But Section 31 does not expressly limit TCA implementing power to the executive, and it will surely be argued before the courts that they too should only apply existing domestic law to the extent that it requires no modification for the purpose of implementing the TCA. Where a court is capable of applying the TCA provisions directly, Section 29(1) appears to oblige it to do so. A court could easily do so in any case where the relevant TCA provisions do not allow for any discretion, as regards their implementation. If the concept behind the EUFRA provisions on implementation had been that only the UK government is given authority to implement the TCA, and not the courts, the EUFRA provisions would have been framed differently: as giving the government exclusive implementing power, including the power to modify existing domestic law. However, Section 29(1) speaks to the continued effect of existing domestic law, not just to a power of implementation.

At first sight Section 29(1) – or at least the above reading of it – may appear incompatible with Art 5 TCA. How can the UK Parliament provide for some degree of direct effect of the TCA, when that agreement itself excludes such effect? However, the contradiction is more apparent than real. It is generally accepted that there are essentially two routes through which an international agreement can produce direct effect in the domestic law of a contracting party. The agreement itself may provide for such effect, but that is a rare occurrence. Even the TEU and the TFEU do not expressly speak to their domestic legal effect, and it was the ECJ which established the direct effect and primacy of EU law. The other route is through the domestic law of a contracting party, which may either be case law or legislation. That is particularly the case in the UK. The UK legal system operates in a strictly dualist way: international law, binding on the UK, does not become part of UK law other than through some form of express enactment. The UK Parliament is sovereign, and it was the EU law challenge to this sovereignty that was central to the Leave campaign. It was also parliamentary sovereignty which led to the much commented dual nature of the EU law principles of direct effect and primacy, in the period of membership (Craig & de Búrca, 2020). The general view was that, in addition to the CJEU case law, direct effect and primacy required a UK statutory basis, in the form of the European Communities Act.

The above reading of Section 29(1) EUFRA is therefore compatible with Article 5 TCA. It is not the TCA itself that requires direct effect, but that cannot stop the sovereign UK Parliament from providing for such effect.

It is not difficult to think of hypothetical examples of how the TCA could be given effect in UK law. A straightforward one would be a case in which a trader is subject to a customs charge, and challenges that charge under the relevant TCA provisions.[7] If the charge was imposed under 'existing' UK law (i.e. UK law predating the entry into force of the TCA), then any court hearing the trader's challenge would need to take account of Section 29(1) EUFRA: that existing law has effect with such modifications as are required for implementing the TCA. If the TCA contradicts existing UK law, the court will have to give precedence to the former.

Ultimately, the question whether this is the correct interpretation of Section 29(1) will need to be answered by the UK courts, and may well reach the Supreme Court. Yet it is difficult to see how Section 29(1) could be read in such a way that the courts have no authority to give effect to TCA provisions whose implementation requires the setting aside of existing domestic law.

It would be something of an irony, to say the least, if some parts of EU law were found to have been resuscitated through the exercise of parliamentary sovereignty, when it was the challenge that EU posed to such sovereignty which the Leave camp sought to have removed. Of course, the TCA is not to be equated with EU law. As analysed above, it contains hardly any direct references to EU law. But parts of it, for example, on subsidies, do seem a close fit with the corresponding EU law system. Here too, then, is a dead end for the Brexit sovereignty project.

5 | CONCLUSION

This initial analysis of the TCA shows that the slogan of 'taking back control' is difficult to implement, even by a government that is keen on doing so to the point of being ideological about it (Parker et al., 2021). The EU's insistence on a level playing field, the need to avoid a border between Ireland and Northern Ireland, the Brussels Effect, the direct effect of the withdrawal agreement, and the UK implementation of the TCA are all elements which severely limit Brexit sovereignty.

First, as has been shown, in terms of broader policy (and law-making) alignment, the TCA avoids dynamic alignment, but continues to impose significant obligations of nonreduction of existing levels of protection. As such, it will stand in the way of any meaningful deregulatory exercise in the wide policy fields that are caught by its provisions.

Second, the Brussels Effect and the associated EU equivalence/adequacy policies will have a chilling effect on using the regained sovereignty to diverge from EU laws and regulations, in important areas. The latter include, but are not limited to, financial services and data protection regulation. In many areas, UK law may still look very similar to EU law for years to come. Where it does not, EU product standards will continue to produce a de facto Brussels Effect, particularly for goods manufacturing, given the significant integration between UK and EU markets and the lack of proximity of most non-EU markets.

Third, even the formal legal effect of EU law in UK domestic law could not be fully abandoned. The withdrawal agreement has direct effect, and will be significant in a number of areas. The TCA, on the other hand, does not require direct effect, but what the negotiators have taken away appears to be reintroduced, at least in some form and to some extent, in the UK's domestic legislation.

The analysis of those limitations to Brexit sovereignty also exposes the fundamental flaws of this project. At the heart of those flaws sits an unresolved and unresolvable tension between taking back control and continuing to benefit from free trade and movement. That tension prevents the UK from reclaiming an absolutist form of sovereignty. It is moreover difficult to see how even the current form of Brexit sovereignty will withstand the test of time, in a globalised world.

ENDNOTES

1. Whether this is the final act remains very much to be seen, see Craig (2016, 2017, 2020, 2021).
2. See for a general analysis, Horn et al. (2009).
3. Opinion 1/17 re CETA EU:C:2019:341.
4. (2019) OJ C 384 I, p.178.
5. See, further, Scotford (2017)
6. See further Craig (2021). I have also benefited from a presentation by Prof Craig at a webinar of the UK Association for European Law (26 May 2021).
7. I am again indebted to Prof Craig for this example.

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