

**Conference Report: The United Kingdom's Withdrawal from the European Union (?)  
Domestic and European Constitutional Implications**

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On the 24<sup>th</sup>-25<sup>th</sup> April 2019, constitutional experts from across the United Kingdom, the Republic of Ireland and beyond gathered at the University of Strathclyde in Glasgow for the second annual conference of the International Society of Public Law – British-Irish Chapter. In her introductory remarks, Aileen McHarg, Professor of Public Law at the host university, noted the profound and far-reaching questions that the UK's proposed withdrawal from the European Union had engendered, including, of course, the question of whether withdrawal would occur at all, highlighted by the placement of a strategic question mark in the conference theme. It was this sense of volatility that would be returned to by many participants throughout the two days.

The conference keynote, 'In Search of the Constitution' was delivered by Martin Loughlin, Professor of Public Law at LSE and one of the UK's leading theorists in Public Law. Echoing a 1977 account of the same name, in which Nevil Johnson suggested that the UK's constitutional trajectory would lead it towards 'revolutionary change' or 'progressive paralysis', Loughlin argued that, in the current political impasse regarding Brexit, the latter could be seen to have taken hold. To illustrate this, Loughlin traced the development of the 'English constitution' (a phrase that he conceded was contentious but insisted was accurate) through six distinct historical phases. In each of these phases, he highlighted how the constitution responded to historical pressures in order to remain functional. For the first three phases, this meant that ancient constitution had to accommodate democratisation and the expansion of the executive. In the fourth and fifth, the remaining practices of the ancient constitution were eroded in favour of constitutional modernisation driven by European integration – which in turn led to a crisis in the functioning and legitimacy of the United Kingdom's constitutional mechanisms in the sixth phase. By showing that what is considered to be 'constitutional' is contingent and subject to historical circumstances, Loughlin hoped to give greater context for the myriad and fiercely contested constitutional debates around Brexit.

The conference then split into a series of parallel panels organised around a specific or unifying theme.

In Panel A, participants considered the destabilising effect of Brexit on the 1998 constitutional settlement on the island of Ireland. It was suggested that the UK's withdrawal from the European Union had increased the likelihood of a border poll on the prospect of (re-)unification. Panellists therefore considered the constitutional questions that (re-)unification would pose. Amongst these were the continuing necessity for consociational arrangements in Northern Ireland and the likelihood and desirability of absorbing Northern Ireland within the Republic's existing constitutional structure.

Panel B focused on 'UK Constitutionalism after the Vote to Leave the EU'. Again, the implications of the UK's vote to withdraw from the European Union were seen to have affected the constitution in ways far beyond the immediate objective. Participants considered such

diverse issues as the wider implications of litigation that aimed to affect Brexit, the immediate and long-term effects of Brexit on constitutional conventions and the implications of EU membership and Brexit for the concept of parliamentary sovereignty.

Continuing with the observation that the Brexit vote had impact far beyond its immediate aims, Panel C explored the particularity of Northern Ireland's constitutional settlement and its uncertain status after Brexit. Panellists highlighted the plethora of political, legal, social and economic problems that the Brexit vote posed for the people of Northern Ireland. Again, at the heart of the discussion was a question of how divergent notions of constitutional legitimacy led to political paralysis.

Panel D considered the continuing relevance of EU law to the UK after the Brexit vote. Panellists offered their reflections on the extent and force with which the UK would continue to implement EU international directives and how UK courts would continue to adopt EU techniques of statutory interpretation after the Brexit process had been completed.

The parallel panels continued in day 2, with Panel E reflecting on the effect of Brexit on the relations between Parliament and Government. It was suggested that the Brexit process threw light on pre-existing issues in the relationship between parliament and the executive in the UK, such as the wide range, and lack of scrutiny, of delegated legislation, executive control of the legislative process and the tendency of the executive to hide behind privileged legal advice when proposing policy. It was speculated that attempts to resolve these issues during the Brexit process may lead to more lasting reforms.

While much of the discussion so far had focused on the domestic effects of Brexit on the UK and Ireland, Panel F considered the effects of Brexit beyond the state. Panellists aimed to identify methods to allow citizens and companies to continue to, in some sense, 'belong' to the EU despite the UK's decision to withdraw.

This focus on the effects of Brexit beyond the nation state was continued as attendees united for the plenary panel, which considered the implications of Brexit for the future of the EU. In three neatly connected presentations, the panellists considered the main challenges for the EU after Brexit and suggested potential constitutional solutions to these challenges. Amongst the biggest crises for the EU were in the rule of law, migration and the 'Euro crisis' – all of which, it was observed, were crises in which the UK was a peripheral figure. One area where Brexit would significantly impact the EU was its role on the international stage. It was suggested that a possible solution to these crises could be in the concept of 'transformative constitutionalism'.

The conference drew to a close after the conclusion of two final parallel panels.

In Panel G, contributors discussed the effect of Brexit on 'place'. Echoing Martin Loughlin's conclusion that European integration may have saved the UK constitution from progressive paralysis by allowing it to undergo modernisation, panellists considered the destabilising effect Brexit would have on different territorial entities within the United Kingdom.

Panel H considered the effect of Brexit on concepts of sovereignty and rights in the UK and Ireland. Panellists concentrated on how the process used to effect constitutional change, the referendum, had been attacked by critics as, *inter alia*, sitting uneasily with the UK's constitutional traditions and offered reflections on whether such attacks were fair. Another

thoughtful account predicted that, in the event of of Irish (re-)unification, the judiciary may reconceive its role in the protection of constitutional rights as primarily counter-majoritarian.

The conference provided a productive forum for academics with a range of experience(s) and focus to come together and reflect on the potential implications of the Brexit vote.