

Crisis, Identity and Challenge: Next Steps for the 'English' Constitution

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Abstract : This paper explores the existing and evolving constitutional arrangements within the United Kingdom and within the wider international context of the EU. It considers the nature of an 'English' constitution and internal colonialism that underpins it. The debates over the UK's exit from the EU have been many however the constitutional position of the devolved nations (Scotland, Northern Ireland and Wales) is little understood or explored. Their constitutional position has been touched upon in academic debate (but not widely) and is only now beginning to receive attention. The paper considers the constitutional role of the legislatures within the UK; the UK Parliament Bill for exiting the European Union and provides a commentary on the Brexit process in relation to constitutional arrangements within the UK and EU. Questions arise over the constitutional framework and, whether, having delegated competencies, the UK Parliament can now legislate in relation to delegated competencies without the consent. The Scottish Parliament and Welsh Assembly are a permanent and a fixed feature of the UK's constitution, but their position is set within the traditional concept of the 'English' constitution. The current situation is opaque and complex and raises significant constitutional questions. In relation to exit from the EU two of the nations did not vote in favour of Brexit and the third is in receipt of an inequitable funding settlement. Questions arise as to whether the work of modernising the UK's constitution over the past twenty years in recognising the Nations and governments within those nations is now being unpicked and whether the piecemeal and unequal process of devolution and new constitutional arrangements hold weight. Questions of democratic legitimacy arise throughout. An advisory referendum (where no definition of the EU was provided) in which two of the four nations voted to leave the EU and two voted to remain has led the UK Government negotiating a wholesale exit from the EU based on 'English' constitutional law principles. Previous constitutional referendums in relation to devolution within the UK have been treated differently. Within the EU questions are being raised in relation to the focus on member states. The goals of the EU mention member countries and its purpose is seen as being to promote greater social, political and economic harmony among the nations of Europe. The emphasis on member states is proving challenging and has led flawed processes. Scrutiny of legislative proposals, historical developments, and social commentary reveal distinct national identities within the UK. Analysis of the debate, legislation and case law surrounding the exiting process from the EU reveal a muddled picture of a constitution in crisis and significant challenges to principles underpinning the rule of law. Suggestions are made for future reforms and a move towards new constitutional arrangements beyond the current 'English' constitution.

Keywords : English, constitution, parliament, devolved

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