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**Constitutional Reform and Brexit**, by Gary Wilson, (London: Routledge, 2023), viii + 202 pp., hardback, £104, ISBN: 9781032016160.

In *Constitutional Reform and Brexit*, Gary Wilson examines the impact the UK's exit from the European Union has had on the UK's constitution. This book provides a clear argument for treating Brexit as an ongoing force for change in the constitution, rather than a historical event that has passed and reset the UK's constitutional arrangements to what they were in the early 1970s. It will be of interest to any constitutional scholar and student who is thinking about constitutional reform. Wilson revisits key debates surrounding existing constitutional reform proposals, and considers how the facts that contributed to the 'Leave' victory need to inform future debates surrounding constitutional reforms.

Wilson identifies four strands to the relationship between constitutional reform and Brexit, which are developed throughout his study (p.2-3). First, Brexit impacted the constitution by removing the connection between domestic law and European Union law. Today, legal protections and rights emanating from EU law depend on the discretion of Parliament for their continuing in force. Second, and this argument is central to the thesis of the book, the UK's withdrawal from the EU does not simply restore a world that existed prior to the UK's accession to the bloc. The constitutional reforms that took place during the UK's EU membership were structured around the expected continuation of that membership. Brexit inflamed territorial divisions between and within the nations of the UK (p.2), and devolution more generally (p.50). Third, the relationship between Brexit and constitutional reform must take account of the causes for Brexit and the resulting pressures for change. The Leave vote was driven in part by the electorate feeling that governmental and political institutions were unresponsive to their needs. The importance of 'taking back control' needs to be considered in relation to constitutional reform which may impact the relationship between different levels of government and the citizenry. Fourth, the process by which Brexit came about gives rise to important constitutional questions. These include whether the UK will make more use of direct democracy going forward, and what the relationship between the legislature and the executive will be.

The book has two parts and is divided into six chapters. Part One comprises Chapters One and Two. Chapter One considers the UK constitution and provides an overview of British constitutional reform over the past century. Chapter 2 considers the position of the UK within Europe, which covers the history of the UK's engagement with and involvement in the European Economic Community, the European Community, and then the European Union. Part Two covers Chapters Three to Six. These four chapters have a common structure. Each chapter outlines the 'traditional constitutional position' of the topic in question, the historical changes and challenges up to 2016, before considering the 'Brexit context', and the possible next steps in the area. Chapter Three considers the allocation of sovereign authority in the UK between Parliament, the Executive and the 'people' in constitutional decision-making processes. 'Sovereignty' is a key theme throughout the book and how it influences constitutional reform debates. Wilson considers sovereignty as the source of the supreme or ultimate authority in the state. It is in this sense that sovereignty constrains or guides constitutional change (p.4). Chapter Four focuses on the constitutional integrity of the UK, considering the likelihood of whether the UK will break-up post-Brexit, with focus on the devolution of power within the polity. Chapter Five analyses the UK's model for the protection of human rights, and Chapter Six reviews the likelihood of the UK codifying its constitution, deliberating on the UK's constitutional model after Brexit.

The fractured nature of politics in the years following the referendum only drew attention to the fault lines in the constitution. The traditional story of the UK constitution representing a

concentrated centralised power within the Westminster Parliament was called into question (p.8). There was no workable Parliamentary majority between June 2017 and December 2019, which led to the UK not having a clearly defined negotiation strategy. This contributed to the twin *Miller* cases, in which the Supreme Court wrestled with the correct relationship between the prerogative and parliamentary sovereignty. In addition to the legal challenges, the absence of a governing position meant that late night Parliamentary votes became commonplace, and the Government was defeated on straightforward procedural matters. The apogee of the strength of this Parliament could be found in the European Union (Withdrawal) (No 2) Act 2019, proposed by backbench and Opposition MPs, which was passed over Government objections and forced the Brexit withdrawal date to be postponed by several months.

Traditional conceptions of parliamentary sovereignty reinforced the political nature of the UK's constitution (p.12). Yet EU membership radically altered our perceptions of this doctrine. As Wilson notes, this was not just about the supremacy of EU law. The UK is traditionally understood as a representative democracy, but EU membership introduced elements of direct democracy into the UK's political processes (p.16). It is almost certainly the case, for example, that if the UK rejoins the EU, that will take place after another consultative nationwide referendum.

In tracing the Brexit process in Chapter Two, Wilson notes that the *Miller* judgments and the European Union (Withdrawal) Act 2018 created a situation where there are effectively no legal limitations on Parliament's power to effect or prevent reforms of a constitutional nature (pp.49-50). But alongside this, Brexit exposed controversies pertaining to the most appropriate means by which major constitutional decisions ought to be taken. Wilson identifies a presumption in favour of using referendums to resolve constitutional debates (p.61).

Following the 2016 referendum, Parliament had to determine a form of Brexit compatible with the wishes of 'the people' (p.68). A dominant constitutional view developed that when a referendum is held, Parliament must implement its outcome (p.76). In practice, sovereignty flows from the people through Parliament. Yet Wilson identifies issues with the constitutional use of referendums in the UK. They have been held on an ad hoc basis, presenting voters with a binary choice to complicated issues. They also undermine the deliberative decision-making of Parliament. Finally, the legitimacy of a referendum is undermined when voters do not vote on the basis of the perceived merits or demerits of the issue, but on the basis of other considerations (pp.77-82). Building on the lessons of the 2016 referendum, Wilson argues that the UK needs clear parameters for the use of constitutional referendums in the future, especially given the polity is not based on direct democracy. In other words, the UK needs a clear articulation of where sovereignty lies in the referendum process. This includes clear parameters for when constitutional referendums should be used, a clearer articulation of the roles of Parliament and the 'people' within constitutional decision-making processes, and clear choices in the vote. Ideally, Wilson contends that such referendums should be post-legislative. Wilson also ties this to the importance of ensuring a citizenry with better political knowledge and deliberation, to ensure voters make an informed choice (pp.82-88).

In discussing devolution, Wilson highlights a number of elements of Brexit which potentially undermine devolution. Devolution is premised on the idea of local sovereignty. Over 150 policy areas existed where EU law intersected with devolved competencies. The *Miller* judgments, by underscoring the supremacy of the Westminster Parliament and its ability to legislate against the Sewel Convention, undermines efforts to strengthen the devolution settlements (pp.126-127). The Internal Market Act 2020 created a paradoxical situation

where the Act cannot be disapplied to the devolved nations, but the UK Parliament can disapply the Act when legislating for England. Whereas EU law has a symmetrical effect on the UK, the post-Brexit Britain is asymmetric in its approach to trade, most obviously identified with the unique position of Northern Ireland in the union. Wilson's recommendation is to develop devolution, including England's regions. The starting point would be to give the Sewel Convention legal force to protect the devolved institutions from encroachment by Westminster (p.135).

In the final chapter and conclusion, Wilson brings together the varying constitutional reform debates that reflect competing perspectives concerning the location and extent of sovereign power within the state (p.198). Whilst the core features of the UK's constitution remain essentially unchanged, reform, Wilson argues, is inevitable. Popular sovereignty, if it is to be meaningful, must be embedded within clear parameters. The same applies to devolution. Reforming the constitution must also involve giving more protections to rights and interests than relying on the discretion of Parliament. Wilson concludes by arguing that proponents for constitutional reform should focus on incremental reform, such as placing constitutional conventions on a legal basis. This may not be expansive thinking, but Wilson thinks that incremental change is in line with the evolutionary character of the British constitution (pp.201-202). Better to change sustainably than to propose an immediate overhaul that falls flat on its face.

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