

AEJ Meeting with Professor Robert Hazell, April 24 2019

By Peter Norman

Brexit has plunged the United Kingdom into a constitutional crisis with no easy solutions in sight. That was the bleak assessment of constitutional expert Professor Robert Hazell when he met the AEJ's London Section at its lunchtime meeting on April 24th.

Invited to consider whether the British constitution is "still fit for purpose", Prof Hazell, Professor of Government and the Constitution at University College London and founder of UCL's celebrated Constitution Unit, argued that Britain's unwritten constitution was not to blame for Brexit. Rather its origins lay in failings of Britain's adversarial party politics compounded by the weak leadership of Prime Minister Theresa May.

The political crisis surrounding Brexit has, however, created a two-pronged constitutional crisis for the UK. This consists of: i) an unresolved "head-on clash" between popular sovereignty, as expressed in the 2016 referendum result for Britain to leave the European Union, and parliamentary sovereignty and ii) serious tensions between the four nations of the UK - England and Wales which voted to leave the EU and Scotland and Northern Ireland where voters backed Remain.

Prof Hazell argued that any country leaving the EU would have faced a challenge disentangling some 40 years of integration. He absolved the UK's unwritten constitution of blame for the Brexit mess, pointing out that a comparative study of the UK's constitutional set up with the constitutional monarchies of western Europe which have written constitutions had shown little practical difference in the way the differing constitutional structures interacted with the respective political systems.

Brexit was so difficult to solve because of: i) a deep split in the ruling Conservative Party pitching its pro-Brexit membership against a majority of MPs who supported Remain who are in turn being challenged by increasingly assertive pro-Brexit colleagues; ii) Prime minister May having to lead a minority government, relying on the strongly pro-Brexit Ulster unionist DUP for a majority, following her disastrous decision to call a general election in 2017, and iii) the almost total breakdown of party discipline - extending to the cabinet - on which government by political parties depends.

In addition, Mrs May had shown very poor leadership by trying to deliver Brexit as if she commanded a parliamentary majority. Prof Hazell said that following her 2017 electoral defeat she could have learned from the record of the minority Scottish Government of Alex Salmond between 2007 and 2011 which reached out to other parties to push through a legislative programme. Although the Tories were now talking to Labour about Brexit, this initiative had come far too late.

Behind these problems lay the adversarial culture of British politics, nurtured by a first past the post electoral system. There was no ingraining of the spirit of compromise that exists in other European countries where proportional voting systems meant one party very rarely commanded a parliamentary majority.

The result was the UK's constitutional crisis with two elements which could recur. Although referendums are a relatively recent feature of the UK's constitutional set-up - the first having been on the UK's membership of the (then) Common Market in 1975 - they had become quite frequent in recent years and were "here to stay" as part of the UK's political set-up. In addition to pressure for a second Brexit referendum, there was the possibility of a new Scottish independence referendum and an eventual "Border Poll" to ask whether Northern Ireland should unite with the Republic in the south.

One clear lesson of Brexit was that the UK should never hold another referendum like that of 2016 where the options were not properly thought through and one of the choices presented the nation with a complete leap in the dark

Meanwhile, the tensions between the UK's four nations remained unresolved. Theresa May hadn't involved the UK's devolved governments in seeking a solution to Brexit. As Prof Hazell put it, she didn't know how to be the prime minister of a Union as opposed to a unitary state.

So what is to be done? There are, he said, no easy answers to the present crisis. Prof Hazell voiced doubts about the viability of a new referendum on Brexit. Parliament had so far not approved a new referendum. If approved, the timetable would be extremely tight because of the October 31 deadline set by the European Council for a UK Brexit decision. The minimum time needed to organise a referendum is 22 weeks. Thus a decision on holding a referendum would have to be taken within a month of his meeting with the AEJ. This was "highly unlikely".

And what would be the question? If parliament approved a Brexit deal, would this be on the ballot paper with Remain? Or if there is no deal, would the public be asked to vote on this versus Remain even though it would be a complete leap into the dark for the UK?

Prof Hazell floated the idea of Citizens' Assemblies which has supported in the past. These proved effective in Ireland in smoothing passions and spreading understanding over difficult issues such as abortion. In that case, a Citizens' Assembly heard evidence, deliberated and produced recommendations that informed a subsequent referendum.

But he warned that it would be "very unwise" to stage such assemblies in the case of Brexit because the issue is so divisive and toxic. Citizens' assemblies would only work if all sides of the great Brexit divide supported them. And this was unlikely at present, not least because the pro- Brexit section of the UK press could be expected to trash the idea.

That said, Prof Hazell concluded his opening remarks by suggesting that some combination of direct and deliberative democracy might offer ways forward for future referendums. As he later explained in answer to questions, Citizens' Assemblies were "still a work in progress". Most had failed and the ideal model had yet to be found. Ireland had tried a mix of two thirds citizens to one third politicians to give the politicians some ownership of the result but the politicians had shown little interest. The most recent Irish assembly had comprised 100% citizens.

A lively question and answer session provided further insights into the complexities and scale of Brexit. The sheer length of the Brexit crisis set it apart from the constitutional crises of the 20th century. The Commons' power struggle with the House of Lords before the First World War, the Abdication Crisis of the 1930s and the Suez crisis in the 1950s had all been resolved within months.

The protracted Brexit crisis was taking its toll. MPs were "in a really desperate situation" with some desperately torn and conflicted by Brexit. The Civil Service is "unbelievably stretched" because of the Brexit workload and the "nightmare" of working for a government and cabinet that do not know what their policy is. While it was unclear whether Britain's two party system was breaking up in a serious way, the division between left and right no longer appeared dominant. Instead, identity politics were coming to the fore.

The vast majority of the public had tuned out of Brexit long ago. However, people were interested in outcomes and if Brexit turned out for the bad, voters would look for scapegoats. The UK was not immune to the politics of ugly populism.

Prof Hazell was asked where he thought the UK would be in 50 years' time. It would still be a monarchy, he said, because monarchies are popular in Europe. But he was less confident of there being a UK of four nations.

The Brexit referendum showed that people sometimes voted against their economic interests. In a second independence referendum, it was possible that Scotland could vote for Europe and EU membership, rather than follow economic logic and remain in its single market with England and the rest of the UK.

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