



# ‘A Symptom of an Underlying Condition’. Law, the Humanities, and a Non-formalistic Approach to Brexit

Matteo Nicolini<sup>1,2</sup>

Accepted: 12 June 2023 / Published online: 3 July 2023  
© The Author(s) 2023

## Abstract

The essay addresses Brexit as a constitutional and jurisgenerative moment. It provides an alternative reading to that traditionally used to assess its impact on the Anglo-British constitution. Politics and legalism have trapped Britain in a formalistic approach without offering innovative responses to the challenges posed by Brexit, persuading the public that there are no alternatives to an out-of-Europe approach. The essay adopts a different stance, exploring Brexit with less formalism and more attentiveness to its impact on British society. It uses novels and essays, political pamphlets, and other writings prompted by Brexit to examine the conditions underlying this event. Their analysis may nurture the productive imagination needed to support Britain’s constitutional creativity during the post-Brexit scenario.

**Keywords** Brexit · Constitutional Moments · Jurisgenerative Processes · Exit Day · Implementation Period · Legal Imagination · Brexit novel · Identity · Nostalgia

## A Problem of Imagination. Brexit and the ‘Condition’ of Britain

Much has been written about Brexit. It has attracted the attention of lawyers, sociologists, economists, and political scholars. It has been (and no doubt will continue to be) examined within all these disciplines. Consequently, this essay will not indulge in repetitive accounts; rather, it will assess it as a ‘major constitutional change’.<sup>1</sup> Ackerman would count it among the ‘constitutional moments’ gaining practical

---

<sup>1</sup> *R (on the application of Miller and another) (Respondents) v. Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5, at 81, 100, and 171.

---

✉ Matteo Nicolini  
matteo.nicolini@univr.it

<sup>1</sup> Law Department, Verona University, Via Carlo Montanari 9, 37122 Verona, Italy

<sup>2</sup> Newcastle Law School, Newcastle University, 21-24 Windsor Terrace,  
Newcastle Upon Tyne NE1 7RU, UK

significance in troubled times.<sup>2</sup> Leaving the bloc demanded (and still demands) a good dose of imagination.

Constitutional moments like Brexit are often turbulent and troublesome and ‘inescapably put productive pressure’ on legal scholars and communities. Lawyers are called to ‘connect’ this novel situation with the ‘knowledge and experience’ they possess, ‘synthesising and reworking them in order to fashion more suitable norms and practices.’<sup>3</sup> Similarly, troubled contexts prompt our communities to develop their own vision of the future.

Seyla Benhabib labels these moments ‘jurisgenerative processes’: a ‘democratic people, which considers itself bound by certain guiding norms and principles, engages in iterative acts by reappropriating and reinterpreting’ its inherited legal knowledge. Thus, a political community shows ‘itself to be not only the subject but also the author of [its own] laws’.<sup>4</sup> Communities manage these complex moments by collective acts of constitutional creativity; ‘imaginative unity depends on coherent, progressive interconnection’ of the different societal actors notwithstanding their fragmentation and polarisation.<sup>5</sup>

This also applies to Brexit. As Justin Welby, the Archbishop of Canterbury, states: ‘The British vision for our diversity and for human flourishing requires ... wide-leadership and imagination’ to knit together ‘the context of our past, the threats and difficulties of the present, and ... faithfulness to our future’.<sup>6</sup> Although the UK left the EU three years ago, the current situation is far from delivering this vision. Ali Smith’s novel *Autumn* thus describes the aftermath of the 2016 referendum: ‘All across the country, the country is split in pieces. All across the country, the countries cut adrift. All across the country, the country was divided, a fence here, a wall there, a line drawn there, a line crossed there’.<sup>7</sup> Trapped in a limbo, *This Sovereign Isle* is unable to disengage itself from the travails caused the ‘interplay of many different beliefs about the past’, ‘conflicting understanding of the present, diverging expectations of the future, and divided loyalties and identities’.<sup>8</sup>

I have pointed elsewhere to the causes of such a situation: the debate about the ‘condition’ of Britain has veered towards the extremes, namely *politics* and *legalism*.<sup>9</sup> More of this will be explored again in this essay. *Politics* and *legalism* are the main perspectives used to assess Brexit’s impact on the Anglo-British constitutional context. Both have trapped Britain with their *formalistic* approach, which employs traditional legal patterns without offering innovative responses to the challenges Brexit poses. Adapting this ‘new’ issue to the ‘traditional’ framework, formalism is unable to cope with the current societal fragmentation. In sum, *politics* and *legalism*

<sup>2</sup> Ackerman (1991) and (1989), 456.

<sup>3</sup> Nicolini et al. (2020), 3 and 1 respectively.

<sup>4</sup> Benhabib (2006), 49.

<sup>5</sup> Bennett and Reilly (2020), 206.

<sup>6</sup> Welby (2018) 10.

<sup>7</sup> Smith (2016), 61.

<sup>8</sup> Tombs (2022), ix and 60–96.

<sup>9</sup> Nicolini (2020), 240.

are used to persuade the public that there are no alternatives to an out-of-Europe vision.

This essay challenges this approach by supplying an alternative reading. I agree with Justin Welby: a 'deeply fractured and angry society' percolated by the 'legacy of the bitterness of the Brexit campaign' needs healing and reconciliation.<sup>10</sup> Reconciliation entails mutual understanding, which in turn means exploring Brexit with less formalism and more attentiveness to its societal impact. This is precisely what this essay does. Brexit has a 'huge impact on the work of some of our best novelists'; it 'was a symptom of an underlying condition' and a "'protracted" and "extended" political event with deep historical roots'.<sup>11</sup> 'Brexit's divisions? They aren't new', Ali Smith explains in an interview to *The Guardian*; 'Brexit has just made them properly visible to us all'.<sup>12</sup> 'The referendum wasn't about Europe at all'; 'Maybe something much more fundamental and personal was going on', one of the characters says in Jonathan Coe's *Middle England*.<sup>13</sup>

Brexit is more complex than we used to think. It is a 'condition of conditions', an admixture of often conflicting interests coexisting alongside each other. Their understanding is pivotal for reimagining Britain, because this may nurture the productive imagination needed to support Britain's constitutional creativity during the jurisgenerative process in the post-Brexit scenario.

## Masterpieces of Political Imagination. On 'Exit Day', Flagpoles, and Funding the NHS

Human nature has the tendency to mythologise historical events, particularly during jurisgenerative processes. The 'constitutional awareness' whereby communities reimagine themselves requires physical space and powerful symbols.<sup>14</sup> Brexit is no exception. Spatially, it has revitalised a 'sort of collective place-consciousness'.<sup>15</sup> The UK 'is a European country' unlike any other. The British people, Tombs highlights, have always imagined themselves *gravitating towards* the continental landmass, which they 'rarely join'.<sup>16</sup> Its imperial ambitions have projected Great Britain out of Europe, developing its own *mentalité* and an insular distinctiveness cherished by Brexiteers.

Brexit requires symbols with political, legal, and geopolitical force. Jurisgenerative processes supply events and symbolic dates, around which a given political community builds reinvents itself.

<sup>10</sup> Welby (2022), 259 and 181.

<sup>11</sup> Respectively: Self (2020) and Shaw (2021), 1, quoting Wellings (2018), 147.

<sup>12</sup> Self (2020).

<sup>13</sup> Coe (2019), 327.

<sup>14</sup> Hill (2016), 8.

<sup>15</sup> Sennett (2019), 1–2. For more on spatial production see Nicolini (2022), 144–145.

<sup>16</sup> Tombs (2022), 1.

‘Exit day’ is one of them. It designates the ‘day and time that the Treaties cease to apply to the United Kingdom’.<sup>17</sup> On *this sovereign isle*, it is also the ‘repeal day’ of the European Communities Act (ECA) 1972,<sup>18</sup> preventing the UK from being ‘truly headed for the status of a colony’ (a ‘full-fledged colony’, hardline Brexiteers would say) of the continental bloc.<sup>19</sup> That day is the dawn of ‘a golden age for the United Kingdom’ freed from ‘the heavy yoke of the European Union ... All of that will be gone, and we will be singing hallelujahs’, the staunch Brexiteer and former Minister of State for Brexit Opportunities and Government Efficiency Jacob Rees-Mogg stated in the Commons in 2019.<sup>20</sup>

On that date, the UK would cease to pay into the EU budget, as Leavers upheld during the referendum campaign. Boris Johnson’s most lucrative slogan appearing on his Brexit bus (‘We send the EU £350 million a week—let’s fund our NHS instead’) titillated the electorate: everybody was invited to imagine further inversions in domestic public services. In retrospect, the slogan disseminated an ‘infamous lie’ by evoking the ‘beauty of “sovereignty” as a political ideal’<sup>21</sup> and the myth of the National Health Service (NHS).<sup>22</sup> The lie was a masterpiece of political imagination, which became a symbol in itself, shirking ‘efforts by economists and civil servants to pin it down’ and releasing ‘political speech from the straitjacket of verifiable evidence’.<sup>23</sup> On the British side of the Channel, ‘exit day’ coincided with Boris Johnson’s second top slogan: ‘Get Brexit done’.

Exit day is an example of the formalistic approach to Brexit. From a legal perspective, it is another masterpiece of political imagination turned into legislative creativity. *Legalism* is patent because exit day is punctiliously established by Sect. 20(1) of the EUWA 2018. The statutory definition of ‘exit day’ has been servient to framing a sense of constitutional inevitability: its very existence entrenched the ‘out-of-Europe’ happy ending in the statutes of the realm.

This aura of inevitability was apparent in the portrayal of ‘exit day’. A sad ceremony was held in Brussels. ‘Watched by crowds of journalists and British expats’, the *Evening Standard* reported, on January 31st, 2020, at 8 pm, the Union Jack was ‘removed from its flagpole outside the European Parliament and replaced with the flag of the EU’.<sup>24</sup> Four hours later, at midnight, the UK exited the EU. Brexit was delivered.

<sup>17</sup> Explanatory note to the European Union (Withdrawal) Act (Exit Day) (Amendment) (No. 3) 2019, SI 1423/2019.

<sup>18</sup> Section 1 European Union (Withdrawal) Act 2018 (hereinafter: EUWA 2018).

<sup>19</sup> As Boris Johnson wrote when resigning from Foreign Secretary on July 9th, 2018. See Johnson (2019).

<sup>20</sup> UK House of Commons, Hansard, Business of the House (Saturday 19 October), Vol. 666, col. 490 (17 October 2019).

<sup>21</sup> Davies (2020), 186–187.

<sup>22</sup> i.e. ‘the symbol of post-war British national pride’: Dowling (2021), 262. See also Kettell and Kerr (2021), 289–291.

<sup>23</sup> Davies (2020), 187.

<sup>24</sup> Christian (2020).

Everything was far from ineluctable, though. Besides unilaterally revoking the withdrawal notification (which was a bit unrealistic),<sup>25</sup> exit day supplied an alternative to the hard out-of-Europe approach, particularly if negotiations would take more time than expected. Several MPs 'objected' to imposing 'a deadline ... for Britain's withdrawal from Europe'. Closing down 'our options as severely as this' might have been pernicious; 'it is perfectly possible that there is a mutually beneficial, European and British, need to keep the negotiations going for a time longer to get them settled'.<sup>26</sup> Section 20(4) EUWA 2018 acknowledged this possibility: its definition could be amended by regulation. Legalism was complemented by *relaxed political tactics*. It was beyond the scope of the EUWA 2018 to make post-Brexit arrangements. Something more was required, namely an agreement with the EU; according to Sect. 13 EUWA 2018, the act would be given full force through a separate act implementing the Withdrawal Agreement (WA).

The repeated postponement of exit day came to an end when Parliament passed the European Union (Withdrawal Agreement) Act 2020 on January 23rd, 2020. The day on which the EU Treaties were expected no longer to apply to the UK had been simmering in the statute book since 2018. The multiple rejections of the WA made it necessary to amend exit day three times to avoid crashing out of the EU in a hard-Brexit mood.<sup>27</sup> The PM Boris Johnson signed the agreement on January 24th, 2020. On the last day of January, 'exit day' eventually *entered* British constitutional reality.

## Getting Brexit Done? On 'Mental Fog' and Lack of Imagination

Brexit was delivered—at least from a legal perspective. It is dubious whether it was effectively 'done' by merely repealing the ECA.

'Exit day' could have been momentous because it supplied the 'opportunity, necessity and challenge to reimagine our society.'<sup>28</sup> It does not come as a surprise that it was charged with economic, emotional, and political expectations.

As noted in the introductory section, the current situation is far from delivering this vision. On the British side of the Channel, the admixture of politics and legalism triggered a disjuncture at the heart of the jurigenerative process, which acted in contradictory terms: being the UK a dualistic legal system, Brexit was achieved by incorporating the WA into domestic law by enacting the pieces of legislation required to comply with the idea of the UK leaving the EU.<sup>29</sup>

<sup>25</sup> See ECJ 10 December 2018, Case C-621/18, *Andy Wightman and Others v Secretary of State for Exiting the European Union*, at 16. See Martinico and Simoncini (2020).

<sup>26</sup> Coe (2019), 352.

<sup>27</sup> EUWA 2018 (Exit Day) (Amendment) Regulations 2019, SI 2019/718, reg 2; EUWA 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019, SI 2019/859, reg 2; EUWA 2018 (Exit Day) (Amendment) (No. 3) 2019, SI 1423/2019, reg. 2.

<sup>28</sup> Welby (2018), 5.

<sup>29</sup> See *Higgs v Minister of National Security* [2000] 2 AC 228, at 241–242 and the *Miller* case, supra note 1, at 57.

The employ of old legal patterns (the incorporation of international treaties into domestic law previously negotiated by a cabinet accountable to Parliament) did not offer innovative responses. Quite the opposite: the sovereign Parliament of the *sovereign isle* adapted the ‘new’ issues prompted by Brexit to the ‘traditional’ constitutional framework. Formalism probed a ‘strategic’ use of the law to normalise Brexit by leaving out of the picture every possible, even plausible, but often unpredictable, economic drawback that might have disturbed the ‘out of Europe’ narrative. The strategic use of parliamentary procedures was consonant with Johnson’s third slogan and ‘piece of political genius’: ‘Take back control’. Brexit was a ‘demand for regaining parliamentary sovereignty by exiting the European Union’.<sup>30</sup>

The legalistic (not to say ‘strategic’) approach to both the referendum and negotiations was able to retrospectively rewrite the history of the Conservatives as regards EU integration, which shifted from Thatcher’s staunch support to Euroscepticism.<sup>31</sup> The latter had been simmering for three decades with the ‘continuous negative coverage of the EU in the popular media’.<sup>32</sup> Johnson contributed to the Eurosceptic narrative as the *Daily Telegraph* correspondent from Brussels; both he and Michael Gove (a former *Times* journalist) were members of the Cameron’s cabinet during the referendum campaign. After May’s appointment as PM, some *Middle England*’s characters insinuate, ‘everyone takes their instructions from Theresa, and she takes her instructions from the *Daily Mail*’.<sup>33</sup>

It also accounts for another pattern of strategic formalism. Adapting Brexit-related issues to the ‘traditional’ constitutional framework through legislation reveals a profound lack of imagination, which—again—points to the inability of British representative institutions to manage the referendum results. This sits at odds ‘with the Burkean view of representative democracy, which requires that while listening to representations of constituents, an elected representative must not surrender his judgment to theirs’.<sup>34</sup> The sense of ‘disarticulation’ in how British political agents have dealt with Brexit so far reminds me of Oakeshott’s ‘mental fog’ that prevents ‘political activity’ from understanding the world. It resembles ‘A mind [that is] fixed and callous to all subtle distinctions.’ Hence, ‘emotional and intellectual habits become bogus from repetition and lack of examination, unreal loyalties, delusive aims, false significances are what political action involves’.<sup>35</sup>

<sup>30</sup> Davies (2020), 30 and Dowling (2021), 262.

<sup>31</sup> On the demise of EU support among Conservatives see Edward (2018) and Tombs (2022), 38.

<sup>32</sup> Carl et al. (2019), 299: See also Davies (2020), 178–180 and Shaw (2021), 99.

<sup>33</sup> Coe (2019), 333.

<sup>34</sup> Wilson (2019), 12.

<sup>35</sup> Oakeshott (1940), 101–102.

## Celebrating 'Exit day' with Sparkling Wine ... and a Historical *Intermezzo*

Far from being a 'mental fog', one might argue that Brexit has been managed through a deliberate 'political activity'. The slogans used during the referendum campaign set out a reading, perhaps more emotional than legal, of the UK leaving the EU. This seems consonant with the 'politico-legal rather than purely legal' nature of the British constitution, which is open to the 'deep magic' underpinning the 'idea of a political or legal imagination'.<sup>36</sup>

What counts as deep magic is open to discussion. And nothing is more subjective than Brexit. We have already met Rees-Mogg promising that he would be singing 'hallelujahs' on exit day. Coe's *Middle England* reports that several Conservatives kept 'banging on about how much they hate the EU and won't shut up until' something would be done about it.<sup>37</sup> Similarly, the PM Johnson's religious zeal hailed the post-Brexit deal on December 24th, 2020. Like *Isaiah* 40:9, he was a herald bringing 'glad tidings of great joy'. This celebratory mood had already infected Theresa May with her 120-million-pound national festival to commemorate the UK leaving the EU in 2018.<sup>38</sup>

On 'exit day', thus, Brexiteers celebrated their triumph. Being the UK an hour behind Continental Europe, the act of exiting the EU (and having the repeal day done) baffled Brussels' technocrats. Both were accomplished simultaneously; in London, Brexit occurred at 11 p.m., i.e. 'earlier' than at the EU Headquarters.<sup>39</sup> Everything was done bombastically. A Brexit bash was organised at 10 Downing Street. Among the Leavers celebrating and 'popping local sparkling wine corks and tucking into Yorkshire puddings', Boris Johnson was in a jocular Brexit mood sipping a Nyetimber (i.e. West Sussex) sparkling wine able 'to rival the French speciality'.<sup>40</sup>

We imagine him, as Jonathan Coe writes, 'With his lovably floppy hair and his bumbling Etonian manner and the ironic smirk that always [hovers] round the edges of his mouth'.<sup>41</sup> We imagine him singing the Christmas carol *Tomorrow Shall Be My Dancing-day*—the day in which the ECA would no longer have force of law in Britain. We then imagine him sipping his Nyetimber in Banqueting Hall. Being, as he is, conversant in art and history, he was probably contemplating the ceiling with three grandiose canvasses that King Charles I had commissioned to Peter Paul Rubens to commemorate his beloved father, as well as the late monarch, James I.<sup>42</sup>

There is anything wrong with celebrating exit day to normalise the 'good' idea of Brexit. This was done, though, by leaving out of the picture the possible economic

<sup>36</sup> Respectively: Mullender (2017), 3. Welby (2018), 10, and Ward (1999), 1.

<sup>37</sup> Coe (2019), 183.

<sup>38</sup> It 'swiftly dubbed the "Festival of Brexit" and redolent of the 1951 Festival of Britain': Shaw (2021), 60. On 'Brexit religion' see Kettell and Kerr (2021).

<sup>39</sup> Section 20(1) EUWA 2018 clarifies that "'exit day" means January 2020 at 11.00 p.m.'.

<sup>40</sup> Shadell (2020). Howland (2022), 262, terms this an act of 'nationalistic opportunism'.

<sup>41</sup> Coe (2019), 292.

<sup>42</sup> The canvasses (*The Union of Crowns*, *The Peaceful Reign of James I*, and *The Apotheosis of James I*) were commissioned in 1629 and finally installed in 1636. See Ward (2022), 78.

drawbacks of exiting the EU. In this lies the ‘mental fog’ surrounding the ‘out of Europe’ narrative lacking vision, ‘political activity’, and understanding of the world.

Take, for example, the slogan related to NHS funding. In *This is Not Normal*, William Davies reports that, able to see ‘the funny side of everything, Johnson was seen strutting ‘around Whitehall asking civil servants if they’ve found his £ 350 million a week yet’. ‘I know it exists’, Johnson might have uttered, ‘because it was written on my bus’.<sup>43</sup> Perhaps he was joking; certainly, he was lying in a way detrimental to the British Constitution. ‘Trust in democratic politics will not be strengthened’, Simon Stevens, the head of NHS declared in 2017, ‘if anyone now tries to argue: “You voted Brexit, partly for a better funded health service. But precisely because of Brexit, you now can’t have one”’.<sup>44</sup>

Probably, the mental fog might have led to overlook (if not rule out) unpredictable events that, willingly or not, usually occur in constitutional moments. Ironically, the exit day was also ‘the day the first case of COVID-19 was discovered in the UK’.<sup>45</sup> In retrospect, lying was an ill-fated decision. Instead of a better funded health service, Brexit meant carrying on financial cuts when the surge in hospitalisations would have required more money.

That night, a further detail might have escaped Johnson. Several extraordinary constitutional moments (and drinks) took place in Whitehall. In Banqueting Hall, for example, Charles I had sipped his last glass of claret on the morning of January 30th, 1649, before being beheaded.<sup>46</sup> In a disquieting series of temporal coincidences, the King’s beheading also marked England’s jurisgenerative transition from a monarchy to an impracticable republic. The jurisgenerative process which is exit day was bloodless if compared to the advent of Cromwell’s Commonwealth. Yet, a new constitutional system had to be reimagined, the shaping of which required considerable imaginative efforts.

What the historical *intermezzo* teaches us is that, in constitutional moments, the legal imagination requires ‘the effort to identify contingencies (most obviously, internal and external threats) that may disrupt the order’s operation’.<sup>47</sup> When confronting the magnitude of Brexit’s constitutional change, Johnson should have exhibited more attentiveness to contingencies and fewer tactical skills.

Yet, contingencies soon ensued. The pandemic, the war in Ukraine, and the energy crisis made Brexit ‘deliverance’ more and more turbulent. In a country unable to reimagine itself, this added fuel to the fire of political flux. Political scandals and the mass resignation from his cabinet prompted Johnson to eventually step down as PM on July 7th, 2022, ‘bringing an acrimonious end to a nearly three-year premiership that has been beset by controversy and scandal’.<sup>48</sup>

<sup>43</sup> Davies (2020), 102–103.

<sup>44</sup> See Davies (2020), 112.

<sup>45</sup> Wager (2022), 22.

<sup>46</sup> On King Charles’s execution see Ward (2022), 79–80.

<sup>47</sup> Mullender (2018) 1020–21.

<sup>48</sup> Meredith (2022).



## Slow, Frightening, but not Transformative. Leaving the EU ... within the EU

I deliberately exaggerated 'exit day' celebrations to stress how politics and legalism created a politico-legal narrative conflicting with Brexit as a jurisgenerative process. The British have certainly spoken by voting to leave; this certainly meant that they were *à la recherche* of a renovated 'morally eligible foundation on which to organise their practical affairs'.<sup>49</sup> In this sense, Brexit became *the* new British organising theme. Seeking this new foundation was a symptom of a 'deeper cultural and political malaise' resulting in 'a crisis of the state', which made Brexit 'slower but ultimately more transformative and frightening'.<sup>50</sup>

The crisis made Brexit *slower*, owing to the protracted negotiations on the EU–UK future relations. It also made it *frightening*: the political urgency of *taking back control*, even if this meant leaving with 'no deal', favoured an extremely formalistic use of the law. The mental fog led to the sense of 'disarticulation' mentioned above: Brexit 'was never really articulated as a viable policy'.<sup>51</sup> It was a failure of the legal imagination that keeps at 'under wraps contrary ways of imagining England, Britain, the UK, the EU, and the globe—past and present—as well as the multitude that traverses these spaces'.<sup>52</sup> It did so formalistically, stripping the pragmatism and attentiveness to contingencies inherent to English legal culture 'without realizing that the fragment left', i.e. the pieces of legislation which got Brexit done, 'cannot bear its own weight'.<sup>53</sup>

Leaving the EU would also mean taking revenge against the EU from a legal standpoint. Joining the bloc in 1972 entailed that the UK had 'to accept the substance of the *acquis communautaire*, which it had had no part in creating', and whose acceptance troubled the UK 'with serious problems of adaptation'. With its *acquis*, the 'European project' is 'a template, into which the Member States and all they do must fit', even when the common law and the British constitution are at stake.<sup>54</sup>

It is doubtful that the crisis of the state made Brexit *more transformative*. Brexit could have been 'A Step into the Unknown', the headline of the *Belfast Telegraph* warned on June 25th, 2016. Particularly in economic terms. The interests of the British financial elites were at risk. Protecting them was not particularly demanding. Far from jurisgenerative processes, they long for continuity. To this end, a 'transitional period' (or in UK legalese, an 'implementation' period) was agreed. Requested by Theresa May in her Florence speech on September 22nd, 2017, it would 'be based

<sup>49</sup> Mullender (1997), 25.

<sup>50</sup> Davies (2020), 31 and 36.

<sup>51</sup> Davies (2020), 31.

<sup>52</sup> McLeod (2020), 612.

<sup>53</sup> Watson (1988), 124–155.

<sup>54</sup> Edward (2018), 254.

on the EU's current rules and regulations'<sup>55</sup>—and this declaration that was incorporated verbatim into Art. 127 of the WA.

Again, it was an admixture of relaxed political tactics and legalism. What mattered most was to get rid of the EU and repeal the ECA. At the same time, the prolonged application of (EU) rules and regulations would favour continuity in financial transactions, even at the cost of provisionally retaining the jurisdiction of the EU Court of Justice, being bounded by EU international agreements, making payments to the EU budget well beyond the transition period.<sup>56</sup>

This was achieved by a further exercise in legislative creation. Section 1 of the EUWAA 2020, allowed the ECA to 'have effect in domestic laws' despite its repeal. Continuity was achieved by severing the form (i.e. the source) from the substance (i.e. the legal effects) of EU legislative action. This did not disappoint Brexiteers; without cancelling its repeal, it concealed legal continuity in the aftermath of Brexit. The statutory notion of 'IP [implementation period] completion day' was created, (amendable in case of protracted negotiations<sup>57</sup>), which replaced 'exit day' in the EUWA 2018 as regards the effects of EU-derived domestic legislation. These are now dependent upon 'IP completion day' and not exit day.

Legal continuity has its matrix in the statutory construction of 'retained EU law' laid forth in both the EUWA 2018 and EUWAA 2020.<sup>58</sup> This is a further parliamentary legislative creation and an act of imagination capable of reconciling Great Britain's past with its future. Retained EU law and the binding precedents of the EU Court of Justice may certainly be repealed.<sup>59</sup> Yet, the WA and the Trade and Cooperation agreement contain several references to EU law. Particularly as far as interpretation is concerned: when referring to Union law or to EU legal concepts or provisions (such as direct effect or disapplication of UK legislation inconsistent or incompatible with the WA); the 'WA makes clear that these concepts should be given an EU meaning'.<sup>60</sup> Evidently, the EU will still *indirectly* haunt English law.<sup>61</sup> Take the UK–Switzerland agreement: 'Many Swiss regulations are aligned with those of the EU'; when trading with Switzerland, the UK will unavoidably re-encounter 'EU rules and regulations from which Brexit was supposed to set the country free'.<sup>62</sup>

While the UK was still within the EU, the possibility to reach new deals with non-EU partners was impracticable, as it could undermine the customs union and

<sup>55</sup> See Dougan (2018), 59. See Art. 126 of the WA: 'There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020'.

<sup>56</sup> See Crowe (2022) and Larik (2020), 457. See Artt. 127, 129, 131.2, 132.2.d and Part 5 of the WA.

<sup>57</sup> See Sect. 39(1)(h), where "'IP completion day" means 31 December 2020 at 11.00 p.m'.

<sup>58</sup> See Sect. 2(1) and 6(1) of the EUWA 2018 (interpretation of retained EU law) and Sect. 25 of the EUWAA 2020 ('Retention of saved EU law at end of implementation period').

<sup>59</sup> The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 repealed retained EU law relating to rights to free movement and immigration. See Barnard (2022), 109–111.

<sup>60</sup> Barnard (2022), 119.

<sup>61</sup> See e.g. Sections 7A of the EUWA 2018 and 29 of the European Union (Future Relationship) Act 2020.

<sup>62</sup> See Larik (2020), 456.

the uniformity of the common commercial policy, the pre-emptive effects of which are laid down in Art. 207 TFEU.<sup>63</sup> Art. 129.4 of the WA eventually granted the UK the right to negotiate new trade agreements, but this possibility was managed with legalism and political tactics. On the one hand, new agreements would enter into force or apply after the transition period; on the other, the UK opted for legal continuity, copying and pasting 'the content of the corresponding agreement concluded by the EU'.<sup>64</sup>

## Harvesting Brexit and Its Nostalgias

'Brexit means Brexit'. There is no clearer statement on the 'out of Europe' narrative than that uttered by Theresa May when launching her campaign as PM on July 11th, 2016. No attempts would be made either to remain inside the EU or re-join it 'by the backdoor', as she suggestively put it. The slogan was shrouded in a particularly thick mental fog, which would affect Brexit-related 'political activity' in the subsequent years. We shall not impute any legal faults to British political agents for its use. As there had been no withdrawals from the EU before Brexit, precedents in point lacked.

The slogan was another masterpiece of political tactics, 'an empty declaration of patriotic nationalism', whose 'popularity' equalled 'its ambiguity'; it was 'a striking rhetorical paradox', whose 'formulation states truth and meaning in the clearest possible linguistic manner while simultaneously occluding truth and meaning completely'.<sup>65</sup> The truth, both stated and occluded, did not point to re-joining the EU but to politics and legalism. *We are leaving the EU*, Theresa May might alternatively have said, *without knowing where the route might lead us*.

The slogan hinted at something more evocative (and provocative) than leaving the EU. It probably aimed to nurture the 'collective place-consciousness' lying at the heart of the British insular *mentalité*. It was, in other terms, a symptom of Brexit's underlying condition, a lyrical nostalgia, 'a "lost" England comprised entirely of hedgerows and loam', as Sam Byers writes in *Perfidious Albion*.<sup>66</sup> The novel portrays England in the aftermath of Brexit. *Britannia* is eventually *unchained*, as the Brexiteer MPs Kwasi Kwarteng, Priti Patel, Dominic Raab, Chris Skidmore, and Elizabeth Truss hoped for in their 2012 eponymous book.<sup>67</sup> It is unleashed from the European yoke and its related big data rules and regulations. In the little and provincial town of Edmondsbury, a multinational giant tech operates; quite sardonically, its name 'Green' resonates with a 'popular vision of an idyllic, rural England'; indeed

<sup>63</sup> See the footnote to Art. 129 of the WA. According to Larik (2020), 454, the EU could have authorised the UK to strike deals 'while still being a member states' (see Art. 2.1 TFEU). 'However, there is no evidence that the UK requested such an authorization'.

<sup>64</sup> Larik (2020), 450–452. See also Łazowski (2022), 96–97.

<sup>65</sup> Respectively Shaw (2021), 33; Docherty (2018), 181.

<sup>66</sup> Byers (2018), 6.

<sup>67</sup> Kwarteng et al. (2012).

it ‘harvests personal information in a manner redolent of Cambridge Analytica’ and its founder Dominic Cummings, the ghostwriter of Johnson’s Brexit.<sup>68</sup>

The reference to Cummings and Cambridge Analytica is particularly fitting. In a time of big data, the reasons for the narrow margin between those who voted for Leave (51.9%) and Remain (48.1%) lies in how the huge amass of personal information stored online was used to nudge voters. Thanks to the right algorithm, Cummings used nostalgia to harvest Leavers. The more the campaign focused on ‘immigration, rising inequality following the 2008 Global Financial Crisis, the sovereign debt crisis in the Eurozone and the EU leadership’s treatment of countries like Greece’,<sup>69</sup> the more ‘present-day England’, Byers writes in *Perfidious Albion*, stood in sharp ‘contrast to another, historical England, which had once made’ the electorate ‘proud and secure’. ‘Through nostalgia’, Cummings sold ‘the political equivalent of escapism’.<sup>70</sup>

The social profiling carried on by Cummings goes hand in hand with the verb ‘to harvest’. Like the name of the high-tech giant in *Perfidious Albion*, it points to gathering personal information and, at the same time, evoke the idyllic past of *This sovereign island*. Another Brexit novel, Melissa Harrison’s *All Among the Barley*, is saturated with the description of pastoral Suffolk in the 1930s. The novel is about rusticity and agricultural cycles, with which ‘the English are already far too much in love’, as well as with their ‘past’.<sup>71</sup> The plot is disturbed by the arrival of Constance FitzAllen, an anti-Jew representative of the Union of Fascists, who tries to titillate the farmers ‘in danger of losing touch with the soil, and with all the lovely all traditions’, also convincing them that ‘a new Agricultural Bank, to help farmers ... must be run by farmers themselves, not by the—well, not by international financiers’.<sup>72</sup> Likewise, ‘a strong government [should] free us from our dependence on the international finance system—one which will act in the best interests of the British people, that will favour British manufacturing and farming, and ensure this never happens again’.<sup>73</sup> Out of the literary metaphor: ‘Brexit means Brexit’.

Melissa Harrison is particularly skilled at fashioning her novel around the symptoms that, *mutatis mutandis*, underpin Brexit. Their redolent, often provocative, representation make them coalesce towards the nostalgia that the industrious British ‘farmer’ Dominic Cummings harvested through digital profiling. This condition of conditions turns out to be a multiplicity of nostalgias: the *national*, the *Imperial*, and the *identitarian*.

To each of them, as well as to their symptoms, I shall now turn my attention.

<sup>68</sup> Shaw (2021), 175.

<sup>69</sup> Dowdling (2021), 267.

<sup>70</sup> Byers (2018), 103.

<sup>71</sup> Harrison (2018), 21.

<sup>72</sup> Harrison (2018), 101 and 115.

<sup>73</sup> Harrison (2018), 140.

## National Nostalgias. 'A New Sense of National Pride'

*All Among the Barley* supplies us with the first form of nostalgia referring to the politico-legal institutions of the realm. The fascist (and populist) Constance FitzAllen addresses the farmers suggesting the British people 'look to the shires and their ancient traditions, not to the intellectual'—and cosmopolitan—'classes in their cities'. These ancient institutions require, Constance clarifies, 'a new sense of national identity and pride'. A sense that, as Brexit demonstrated, thrives outside cities and universities, in agricultural 'Places like these'.<sup>74</sup> London, we should remember, was the precinct of Remainers. As Anthony Cartwright reminds us in *The Cut*, 'people here [outside London] will vote against whatever they think the perceived elite vote'.<sup>75</sup>

*Places like these*, Constance adds in her speech, are populated by 'honourable patriots' decrying the 'enthronement of international money-lending, the centralisation of markets', questioning 'the high-handed edicts' of supranational orders (in the novel, the League of Nations; in contemporary England, the EU), whose legislation has polluted the 'purity of our English soil' and the law of the land.<sup>76</sup> The fictional scene deliberately resonates with the language, the topics, and the symbology of UKIP and the 2016 political campaign. It evokes the Brexit slogans examined above, particularly 'Take back control'. It also reminds me of a passage in Coe's *Middle England*, where BBC News Channel broadcasted Nigel Farage 'unveiling the new poster for the Leave.EU campaign' with a 'winding queue of young people, mainly men, mainly dark-skinned'—Migrants perhaps?—and the 'two words: 'BREAKING POINT'. Then, 'in smaller type, it also said: "The EU has failed us all" and "We must break free of the EU and take back control of our borders"'.<sup>77</sup>

'Take back control' was one of the main constitutional outcomes of the 2016 referendum pointing to the restoration of 'unfettered national parliamentary sovereignty'.<sup>78</sup> In a representative system rooted in the consent of the people, it is curious that, as McEwan states in *Machines Like Me*, parliamentary sovereignty is regained through a 'policy by plebiscites'.<sup>79</sup>

Probably, the choice to restore representative democracy through direct (and plebiscitarian) democracy is another exercise in strategic formalism. The 2016 referendum was legally non-binding. Within a politico-legal constitution, the very fact that the *British people have spoken* by voting to leave adds flashes of inevitability to the 'out of Europe' narrative. Without any consideration of what is right or wrong for their interests, even 'parliament's sovereignty, though legally unlimited', is 'subject to the sovereign people'.<sup>80</sup> The relationship between the political and the legal

<sup>74</sup> Harrison (2018), 140.

<sup>75</sup> Cartwright (2017), 53.

<sup>76</sup> Harrison (2018), 140.

<sup>77</sup> Coe (2019), 306.

<sup>78</sup> Watt (2018), 63. See also Dowling (2021), 262.

<sup>79</sup> McEwan (2019). See also Shaw (2021), 171.

<sup>80</sup> Kirby (2019), 37.

sovereign is the ‘one ultimate object’ of the same constitution. As Dicey wrote, it ensures that Parliament and *its* Cabinet ‘shall in the long run give effect to the will of that power which in modern England is the true political sovereign of the state—the majority of the electors’.<sup>81</sup>

This is clearly repeated in Sect. 38(1) EUWA 2020, where ‘it is recognised that the Parliament of the United Kingdom is sovereign’—notwithstanding, the Acts clarifies, the ‘savings of existing law for the implementation period’ or any direct effect stemming from any EU-related act. Brexit was indeed ‘all about repelling the tide’ evoked by Lord Denning in *Bulmer v Bollinger* ‘to come back to the original conformation of British sovereignty’.<sup>82</sup> It reshapes the constitutional framework in a way that it is consistent with Britain’s past (its ‘ancient traditions’, Constance FitzAllen would say) and Britain’s future. It is also consonant with the *The Dissolution and Calling of Parliament Act 2022*, which supplies the government with a constitutional framework flexible enough to grab Brexit possibilities and opportunities.

Again, a relaxed political tactics is disguised under this constitutional reform. We take for granted that the act is intended to sidestep all the inconveniences that took place in 2019, leading to the rejection of the withdrawal agreement and a stalemate in parliamentary activity. Under the 2022 Act, not only will any prerogative power (including prorogation) become non-justiciable,<sup>83</sup> but statutes authorising early general elections will no longer be necessary.<sup>84</sup> The act repeals the *Fixed-Term Parliament Act 2011*. Parliamentary self-dissolution under its Sect. 3(2)(b) will become impracticable. The PM now has the power to dissolve Parliament, ‘exercisable [again] by virtue of [His] Majesty’s prerogative ... as if the Fixed-term Parliaments Act 2011 had never been enacted’.<sup>85</sup>

The new act legally entrenches the conventional exercise of the royal prerogative completely leaving it in the hands of the PM. They may now threaten a recalcitrant parliament with an early election if it refuses to comply with their will, which counts as the will of the political majority. In so doing, the act erodes the guarantees as regards the functioning of Parliament, ‘by adding an ouster clause to prevent any judicial oversight of the power, and a statement of Dissolution Principles enabling the Prime Minister to advise rather than request a dissolution’.<sup>86</sup> The British constitution is now less politico-legal and more political, with a shift in its very meaning. It is, again, a matter of legalism and politics. Parliamentary (legal) sovereignty was restored through a political plebiscite with non-binding effects; likewise, the (legal) royal prerogative was revitalised by legislation, but its legislative (and non-conventional) exercise will now be unchallengeable both politically (i.e. by Parliament) and legally—judicially (i.e. by courts). Evidently, a general parliamentary election may

<sup>81</sup> Dicey (1885), 353–354.

<sup>82</sup> Martinico (2023), 197. See *Bulmer Ltd v Bollinger S.A.* [1974] 3 WLR 202, at 215–216.

<sup>83</sup> See Sect. 3 of the Act.

<sup>84</sup> Such as the *Early Parliamentary General Election Act 2019* calling an early general election to breaking the deadlock as regards the WA.

<sup>85</sup> Section 1 and 2 of the Act.

<sup>86</sup> Hazell and Charlotte Sayers-Carter (2022), 16.

now count as a plebiscite, surrendering to government (not to Parliament) every political, legal, and constitutional decision.

Nothing is more different from Benhabib's jurisgenerative processes. Instead of considering itself bound by its inherited legal knowledge, political power in parliament is unchained. It needs not reappropriate and reinterpret it. Rather, it will exhibit what Alan Watson terms *political opportunism*, i.e. 'a particular failure of the legal imagination: that of state authorities to create the law that it was wanted' and needed. In a time of *Britannia unchained*, this might depend on the influence of the forces of global capital, showing 'a readiness on the part of the state authorities to allow others'—namely, private international investors not democratically accountable—to 'make a considerable part of the law' in the post-Brexit scenario, surrendering to them (not to government or Parliament) every 'successful juristic opportunism' proceeding 'out of such failure.'<sup>87</sup>

### Still Ruling the Waves? Global Britain and Imperial Nostalgia

The second form of nostalgia percolating Brexit is 'imperial nostalgia'.<sup>88</sup> Although it might seem to contradict the praise for the ancient institutions of the realm, it overlaps with them. *Precisely* for those institutions, Great Britain was able to project itself on a global scale, creating an Empire on which the sun never set. 'A whole host of great British institutions', Sathnam Sanghera states, 'came about or flourished because of the empire'.<sup>89</sup> Evidently, 'Brexit is not at all a parochial affair but decidedly global' aiming 'to reorient [UK] international trading ambitions beyond the existing trading bloc of the EU'.<sup>90</sup>

The idea of Imperial (now Global) Britain has been cherished by Brexiteers to nurture the insular *mentalité* and the inevitability of the 'out of Europe' narrative. Owing to their history, 'the British have a bigger sense' of global connections than the continental bloc; 'the idea of "Global Britain" is simply more feasible and meaningful than would be' that of any other EU member state.<sup>91</sup> Sanghera remembers why Global Britain is so feasible. Not only does the empire account for 'the global pretensions of our Foreign and Defence secretaries', but it also strengthens 'the feeling that' *this sovereign island* is really 'exceptional and can go it alone when it comes to everything from Brexit to dealing with global pandemics'.<sup>92</sup>

Hence, Brexit is the cure to this nostalgia. Take *Middle England*; the 2012 Olympic opening ceremony held in London stirs the feelings of several characters watching it on television. The parade displayed fragments of British (colonial) history with its global connections (and pretensions). Even those less prone to these feelings

<sup>87</sup> Watson (1988) 87 and 96.

<sup>88</sup> Shaw (2021), 60 and Tombs (2022), 30.

<sup>89</sup> Sanghera (2021), 2.

<sup>90</sup> Mcleod (2020) 610.

<sup>91</sup> Respectively: Goodhart (2017), 104 and Tombs (2022), 1.

<sup>92</sup> Sanghera (2021), 1–2.

were caught up in nostalgia: ‘there was something hugely affecting and persuasive about’ how British history was being displayed; ‘... Something fundamental *truthful*, in fact’. The characters felt ‘the stirring of an emotion ... never really experienced at all, perhaps, having grown up in a household where all expressions of patriotism had been considered suspect’. It is ‘national pride’; even reluctantly, they feel ‘proud to be part of a nation which had not only achieved such great things but could celebrate them with such confidence’.<sup>93</sup>

As seen, Theresa May and Boris Johnson also displayed a gusto for Brexit celebrations, which would restore Britain’s global-imperial role with a ‘wider commitment to “the Anglosphere”,’ i.e. the by-product of its ‘imperial expansion’.<sup>94</sup> Once *unchained* from Europe, as James Thomson wrote, ‘Britannia’ would ‘rule the waves’ again and revert to their pristine state of ‘independent free-trading nation’.<sup>95</sup> ‘Britons never will be slaves’.

What is disturbing is the racialised use of the anthem. ‘Rule Britannia’, the narrator in *Autumn* recounts, ‘a bunch of thugs had been sing-shouting in the street at the weekend ... Britannia rules the waves. First we’ll get the Poles. And then we’ll get the Muslims. Then we’ll get the gypsos, then the gays’.<sup>96</sup> What is unnerving is using the imperial imagination to foster a racial attack. Likewise, in *Middle England*, another nostalgic (and a bit of a racist) character was watching the parade, where ‘actors dressed as Victorian industrialists’ were marching; and ‘several of the businessmen were played by black actors. Why did they have to *do* that?’, the character ejaculated, ‘Did people have no respect for history anymore?’.<sup>97</sup>

Mixing characters was the right thing, since it might have helped to tone down the idea that Brexit is the cure to the current British malaise. Yet, a contemporary representation of colonialism may lead to treating the empire as ‘a (re)usable past’. This is what Brexit does: in re-storying it as a ‘triumph’ and ‘laudable legacy’, it ‘cheerfully obscures the darkness of colonial exploitation, resource extraction, genocide, environmental catastrophe, impoverishment, underdevelopment, and social and psychic immiseration’.<sup>98</sup> It perpetuates the idea that “‘them” and “us” never actually meet anywhere but in symbol’.<sup>99</sup>

Recycling the empire makes everybody slavers and, at the same time, enslaved. It is a matter of mixed feelings; empire ‘exists’, Sanghera explains, ‘as a legacy in my very being, and, more widely, explains nothing less than who we are as a nation’. It is no matter of tearing down statues of fighting to keep them, it is ‘impossible to delete or defend British imperialism ... British empire defines us more deeply than these controversies suggest’.<sup>100</sup>

<sup>93</sup> Coe (2019), 132.

<sup>94</sup> McLeod (2020), 610. See also Wellings (2019); Bell (2019), 40–42; Baxendale and Wellings (2019), 213.

<sup>95</sup> Fox (2019).

<sup>96</sup> Smith (2019), 197.

<sup>97</sup> Coe (2019), 132.

<sup>98</sup> McLeod (2020), 612.

<sup>99</sup> Smith (2018), 31. See Namesake (2019).

<sup>100</sup> Sanghera (2021), 14 and 2.



Likewise, in the realm of the law, the UK is not completely unchained from EU rules and regulations, even if Parliament approves the *Retained EU Law (Revocation and Reform) Bill*.<sup>101</sup> Sponsored by Jacob Rees-Mogg, the bill will not completely free the UK. Rees-Mogg's idea of turning 'retained EU law' into 'assimilated law' is more an exercise in futility rather than one in procedural constitutional creativity. This formalistic approach disguises a political tactic: after exit day, repeal day, and IP completion day, it will get Brexit done for the umpteenth time without changing the pith and substance of what is 'assimilated' from the outside. Far from generating jurisgenerative discontinuity, the bill upholds that Global Britain's ambitions are still rooted in legal continuity. Like Britain, the EU is also around the world; as said above, they will unavoidably encounter each other through direct and indirect references to EU law: the WA, the Trade and Cooperation agreement, the UK–Switzerland agreement, and the 'retained' trade agreements with third countries confirm legal continuity. Brexit has missed the opportunity of being jurisgenerative *also* in terms of global relations.

### An Island of Islands. Brexit and the 'English Nationalism Card'

In *Middle England*, Jonathan Coe focuses on a sequence taking place during the Olympic opening ceremony. The sequence is reassuring: 'four different choirs, from all four countries in the United Kingdom' sang a 'different anthem'. A young chorister performed a 'solo version of "Jerusalem"'; his was 'the most beautiful voice'. During the performance, 'scenes of rural life [were] being acted out'. Everything was, no doubt, a bit redolent, but also 'very restful and charming'.<sup>102</sup>

This scene allows us to explore the last of Brexit-related nostalgias, i.e. the identitarian one. The choirs fill the pastoral scenario that has nourished British insular *mentalité*. Britannia is one of the so-called Fortunate Isles, blessed by God.<sup>103</sup> As James Thomson upheld in *Rule Britannia*, *This sovereign island* is the home to a 'rural reign'; it is a 'Blest isle ... with matchless beauty crowned'; it is a place 'still with freedom found'; even the 'Muses ... Shall to thy happy coast repair.'

The young chorister stands out in this island with his voice prevailing over all four nations. Set in a rural landscape, the scene evokes again the UK past. The anthem is a metaphor of both the insular *mentalité* and the overarching superiority of Britannia. Sir Hubert Parry's hymn clarifies that *Jerusalem* was built here, among England's 'green and pleasant' mountains, pastures, and land.

In this idyllic representation, *only* the Muses can repair to these blessed coasts. England is fortunate because it controls its own borders: 'every shore it circles is thine', *Rule Britannia* states. Coasts are turned into 'natural' and defensive borders; in this sense they are *arcifinious*, and 'form a natural defense'.<sup>104</sup> The UK is safe

<sup>101</sup> HL Bill 89 (as brought from the Commons).

<sup>102</sup> Coe (2019), 130–131.

<sup>103</sup> Waters Bennett (1956).

<sup>104</sup> Ochoa Espejo (2020), 33.

because it possesses ‘the sea [as] a natural barrier’.<sup>105</sup> In *Richard II*, Shakespeare labelled England a ‘sea-wallèd garden’<sup>106</sup> protecting the ‘indigenous English folk’ as if it were ‘A lovely rose. An English rose’.<sup>107</sup> The ‘silver sea is both highway and defence: mostly a highway’ as is demonstrated by the several ‘bad migrants’ trying to reach the UK by illegally crossing the Channel in the aftermath of Brexit.<sup>108</sup>

Likewise, Shakespeare employed the garden metaphor to describe the condition of England. Like in Richard II’s distressing times, the ‘commonwealth’ and ‘government’ are now menaced by several threats, mainly related to immigration. There are ‘too-fast-growing sprays/That look too lofty in’ them, and ‘noisome weeds ... without profit suck the soil’s fertility.’ The political community is besieged like ‘herbs swarming with caterpillars’, infesting the purity of English soil.<sup>109</sup> Consequently, we read in *Perfidious Albion*, ‘the ordinary white, working class people ... had been forgotten, and what should have been rightfully theirs’ (‘jobs, benefits and the like’) was now going to ‘immigrants and scroungers’.<sup>110</sup> Britain is an island of islands because social, economic, and racial tensions have built ‘universes ... separated by a wall, infinitely high, impermeable, a wall built out of fear and suspicion and even ... a little bit of those most English of all qualities, shame and embarrassment’.<sup>111</sup> Nigel Farage unveiling the new poster for the *Leave.EU* campaign with the queue of dark-skinned guys and the thugs singing a racialised version of *Rule Britannia* are cases in point. Identitarian nostalgia ‘was a key element of Brexit’,<sup>112</sup> also denying the possibility of crossing these walls.

The UK is an island of islands, I said. Brexit had to be the cure (or the palliative) for its identity divided along social fences and racial walls. The UK is also demarcated along territorial lines. Like the four choirs, Brexit should have rearticulated its composite nature around *Jerusalem*, whose performance was the metaphor of the insular *mentalité* shared by the whole of Britannia.

It is dubious whether the solo version of *Jerusalem* points to a harmonious composition of the four nations making up the UK. If we carefully read the hymn text, we realise that England lies at its core. Likewise, the novels and the other texts perused in this essay are all set in England, in the ‘heart of Middle England, the heart that beat on through everything with its regular, determined beat, quiet and implacable’.<sup>113</sup> Brexit is, I daresay, the generalisation of the deteriorating ‘condition of England’<sup>114</sup>, being the most populated area of the UK, it hosted (together with Wales) the vast majority of votes cast to leave the EU, outweighing Scotland, Northern Ireland, and London, i.e. the strongholds of Remainers.

<sup>105</sup> Tombs (2022), 2.

<sup>106</sup> Shakespeare, *Richard II*, 3.4.42.

<sup>107</sup> Coe (2019), 67 and 75.

<sup>108</sup> Tombs (2022), 2 and Goodfellow (2020), 240–246.

<sup>109</sup> Shakespeare, *Richard II*, at 3.4.35, 36, 34, 46–47.

<sup>110</sup> Byers (2018), 106.

<sup>111</sup> Coe (2019), 90.

<sup>112</sup> Dowling (2021), 267.

<sup>113</sup> Coe (2019), 285.

<sup>114</sup> Carlyle (1840), Ch. I, especially 12 and 14.

It is not coincidence that 'instead of playing the British unity card, the Conservatives decided to play the English nationalism card'.<sup>115</sup> Precisely because England is a 'state of mind, not a consciously organized political institution',<sup>116</sup> Englishness and Britishness systematically overlap, thus making the UK 'a fictive country: Anglo-Britain'. With noticeable consequences. Firstly, Ailsa Henderson, Charlie Jeffery, Dan Wincott, and Richard Wyn Jones are right when they write that 'Brexit was made in England'.<sup>117</sup> Secondly, singing alone and overcoming the other nations, the (English) young chorister gives form to English superiority over the other British nations. Not only does this generalisation turn Englishness into Britishness, but it also makes Great Britain coincide with English 'place-consciousness', whose imaginative geography now goes well beyond the borders drawn by the Devolution Acts in favour of Scotland, Northern Ireland, and Wales.<sup>118</sup>

Thirdly, the (mainly English) decision to leave the EU has been implemented at the cost of great sacrifice. Take, for example, Gibraltar, where the overwhelming majority voted to remain (95.9%). A mix of imperial and identitarian nostalgias overshadowed these electoral results longing for continuity.<sup>119</sup> Besides its citizens' rights (Art. 1 of the Protocol on Gibraltar annexed to the WA), the Overseas Territory was tactically excluded from the scope of the Trade and Cooperation Agreement. The way in which its borders have been handled so far reveals another failure of the legal imagination, as if the British territory's porous borders with Spain were impermeable. Politically, this 'out of Europe' narrative is clearly grounded in the nostalgic idea of Anglo-British colonial place-consciousness.

Likewise, this place-consciousness views Northern Ireland with suspicion. The generalisation of Englishness requires firm frontiers, even when these neglect the areal continuity with the Republic now acknowledged by the *Immigration Act 1971*.<sup>120</sup> It appears to me that Great Britain does not exactly know where it might 'create [its] first line of defence' when agreeing on the Protocol on Ireland/Northern Ireland, which is part of the EU–UK Withdrawal Agreement.<sup>121</sup>

In the final rush of its 'out of Europe' narrative, the mental fog prevailed. *We are leaving the EU*, the herald-of-good-tidings Johnson ejaculated, but we do not know how to handle the Northern-Irish issues, how to comply with the Good Friday Agreement, and where to draw the new EU border. The final solution was, *again*, an admixture of legalism and political tactics. From a formalistic legal perspective, Northern Ireland is, without doubt, 'part of the customs territory of the United

<sup>115</sup> Coe (2019), 192.

<sup>116</sup> Rose (1982), 29.

<sup>117</sup> Henderson et al. (2017), 632.

<sup>118</sup> Ward (2023).

<sup>119</sup> Scotland longs for continuity, too. The *UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021* enables the Scottish Parliament to make provision 'that corresponds to provision in EU law after the United Kingdom's withdrawal. See Brett Taylor and Wilson (2023).

<sup>120</sup> Immediately before IP completion day, Sect. 2(2) of the *Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020*, amended the Immigration Act to allow Irish citizens to enter or remain in UK without leave (Sect. 3Z).

<sup>121</sup> Black (1997), 123.

Kingdom’, Art. 4 of the Northern Ireland Protocol clearly states. On February 27th, 2023, the UK and the EU agreed a new political arrangement, i.e. the Windsor Framework. As the amendments to the Protocol adopted by the EU–UK Joint Committee on March 24th, 2023 uphold, the Framework substantially confirms the dual regime of Northern Ireland, which will be aligned to both the EU and the UK rules.<sup>122</sup>

This simultaneous alignment outlines Northern Ireland as a ‘synthetic jurisdiction’. Not only is it defined as a multi-religious group territorially imbricated,<sup>123</sup> but it also becomes a dynamic economic area agreed by both the EU and the UK, which will deliver a ‘sense of commonness’ between their respective economic communities.<sup>124</sup> In Northern Ireland, the UK and the EU have overlapping economic—and ethnic—interests, but one territory to manage under the new Windsor Framework. The dual regime is probably the ‘commonness’ that may act as the ‘driving force’ conveying ‘the will or the need’ of the UK and the EU ‘to cooperate’ in Northern Ireland on economic terms.<sup>125</sup>

To this extent, the Windsor Framework has acted as an interface between the physical, human, and economic geographies of both the EU and the UK in the production of a new legal spatiality for Northern Ireland.<sup>126</sup> It is probably true that, according to the WA, the EU–UK border was drawn on the Irish sea; and that *This sovereign isle* became effectively an island, at least as far as customs are concerned. In terms of legalism, this ‘merely [pushed] the border problem into uncharted waters’.<sup>127</sup> Intriguing, as it is, ‘the sea has no *character*,’ in the original sense of the word, which comes from the Greek [χαράσσειν] *charassein*, meaning to engrave, to scratch, to imprint ... On the waves there is nothing but waves’.<sup>128</sup> This sits at odds with the English tendency to treat the redolent imperial English vision as the vision for the whole UK and replace the UK place-consciousness with the ‘fictive country’ which is ‘Anglo-Britain’. If the sea has no character, the divide triggered by the Protocol may exacerbate the conflict between Unionists and Nationalists as regards the collective place-consciousness of the Northern Irish devolved nation.

Yet, the Windsor Framework tries to dissolve the mental fog on the Irish Sea. We know that the process of the re-territorialisation of Ireland has constantly been haunting its partition since 1921. Indeed, Art. 18 of the Protocol gives Northern Ireland Assembly the possibility to decide on its continued application in the period ending 4 years after the transition period. And the Windsor Framework introduces the Stormont Brake, thus allowing the Irish legislature (and the UK government) to

<sup>122</sup> For more on the Protocol see Butler (2022), 179–184. See ‘The Windsor Framework: a new way forward’, presented to Parliament by the PM and Minister for the Union by Command of His Majesty’ available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1138989/The\\_Windsor\\_Framework\\_a\\_new\\_way\\_forward.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138989/The_Windsor_Framework_a_new_way_forward.pdf). Accessed on 16 April 2023.

<sup>123</sup> Ford (1999), 860.

<sup>124</sup> Perrin (2022), 162–163.

<sup>125</sup> Perrin (2022), 162–163.

<sup>126</sup> Nicolini (2022), Chapter 7.

<sup>127</sup> Shaw (2021), 132.

<sup>128</sup> Schmitt (1950), 42–43.

veto the application of new EU rules within the ambit of the Northern Irish synthetic jurisdiction.<sup>129</sup> It is a real act of 'constitutional awareness', which makes Northern Ireland an island within the island of Ireland, allowing it to reimagine its politico-legal spaces independently from those of England. Quite unsurprisingly, the decision is politically costly, since it does not leave out of the picture the possible, and even plausible, 'continued application' of the Protocol, which will certainly disturb the 'out of Europe' Brexit narrative, as the DUP's decision to oppose the Stormont Brake in the House of Commons demonstrates.<sup>130</sup>

## A 'Wholesale Change' Before 'Reimagining will Inevitably Happen'

'I believe that this country requires a far more ... wholesale change'.<sup>131</sup> In *All Among the Barley*, Constance FitzAllen thus starts tantalising the farmers with her populist-racist political project. Her idea of wholesale change is distant from how we conceive constitutional creativity. Following in the footsteps of Ackerman and Benhabib, we understand that communities need imagination to manage complex moments of constitutional change. Jurisgenerative moments demand a good dose of imagination to grasp them; these 'cannot be achieved by ample resources, but by a change of mood, a decision, or a historic change ... It cannot be forced but may be seized.' Otherwise, it may be, 'missed.'<sup>132</sup>

This essay has approached Brexit as a jurisgenerative moment. It is as if the UK were halfway across a ford, unable to reimagine itself in the aftermath of its withdrawal from the EU. Shrouded in a thick mental fog, the UK is missing *the* moment, unavoidably deepening the several fractures that percolate its society. This is apparent in Coe's *Middle England*; there, Kristian Shaw tells us, we witness 'the strain Brexit placed on familial relations and social circles, creating poisonous rifts that have yet to fully heal'.<sup>133</sup> We come across the lexical item 'heal' again; Welby uses it together with reconciliation when referring to how the complexity of Brexit should be tackled.

This essay cannot heal a nation; nonetheless, it has joined the conversation on the constitutional creativity required by Brexit as a jurisgenerative process. It has proposed an alternative reading, also using non-legal and literary materials—such as novels and texts occasioned by Brexit—to challenge the mainstream 'out of Europe' narrative. This narrative is an admixture of politics and legalism; with their formalism, they have created a politico-legal narrative which sits at odds with the idea of

<sup>129</sup> For how to seek the democratic consent as regards the continued application of the Protocol see The Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020. See also the proposed draft legislation The Windsor Framework (Democratic Scrutiny) Regulations 2023.

<sup>130</sup> UK House of Commons, Hansard, Business of the House (Wednesday 22 March), Vol. 730, col. 338 (22 March 2023). The Protocol was also judicially challenged, and the case dismissed in *Allister & Peoples, Re Applications for Judicial Reviews* (Northern Ireland) [2023] UKSC 5 (08 February 2023).

<sup>131</sup> Harrison (2018), 139.

<sup>132</sup> Welby (2018), 5.

<sup>133</sup> Shaw (2021), 195.

Brexit as a jurisgenerative process to convince the public of the unavoidability of the hard ‘out of Europe’ approach. It is formalistic since it has played politically with the law to conceal the difficulties that arose from a drastic U-turn after forty-and-more years of EU membership. Several examples illustrate this: the tactical amendments to the statutory definition of ‘exit day’; its replacement with the ambiguous ‘IP completion day’; the ‘repeal day’ as a form of legal continuity beyond the transition period; the revival of legislative (i.e. non-conventional) prerogatives related to the summoning and dissolution of Parliament; the statutory creation of Rees-Mogg’s assimilated law; finally, the amphibious collocation of Northern Ireland under a Protocol countering Anglo-British place-consciousness.

My alternative reading has supplied a different stance through which I have been able to call into question the formalistic approach to Brexit. The texts perused act as critical voices as regards the inevitability of the hard-Brexit narrative. They are a ‘socially constitutive form for challenging monolithic constructions’ of Brexit, also ‘in defiance of prevailing political discourses’ revolving around its politics and legalism.<sup>134</sup>

This politico-legal discourse was characterised by a lack of imagination—which is by contrast required in jurisgenerative events. I have termed it ‘mental fog’. Coined by Michael Oakshott, it has proved to be fitting: the whole Brexit process was, as is evident, ideologically motivated. Leaving the EU was part of the Brexiteers’ manifesto. In political terms, Brexit had to be done because it was ‘more important than economic prosperity’.<sup>135</sup> This predicament united the constellation of ‘maverick entrepreneurs ..., private equity barons and hedge fund managers’, as well as the middle-class ‘rentiers ... living off the assets held by pension funds’ that made up Johnson’s ‘no deal’ supporters.<sup>136</sup> That said, legalism was able to get rid of the EU and repeal the ECA, securing at the same time the prolonged application of (EU) rules for the sake of financial predictability.

To achieve this condition, it was necessary to ‘harvest’ Brexit. This verb points to the process of digital profiling whereby Dominic Cummings (and the Leave.EU campaign, more generally) was able to recall the memory of the glorious institutions of the realm, the empire, and its insular identity. The mental fog has added a further condition to nostalgia, i.e. that of a Brexit made in England, thus locating its ‘place-consciousness’ at the core of the jurisgenerative process.

Although mainly made in England (and, partly, in Wales), the hard-Brexit approach substantiates the Anglo-British vision of an alternative destination ‘out of Europe’. This is detrimental to the UK as a whole for two reasons. Even assuming that the redolent England counts as the vision for the UK, Englishness will never account for the complexity of *Britannia*. Quite the opposite: it might exacerbate the collective place-consciousness of the devolved nations (especially Scotland and Northern Ireland), leading their ‘constitutional awareness’ to reimagine themselves as politico-legal spaces independent from a staunch Brexiteer England. Acting

<sup>134</sup> Shaw (2021), 3. On the ‘condition of England’ see McLeod (2020), 612.

<sup>135</sup> Wager (2022), 27.

<sup>136</sup> Davies (2020), 175–176.

tactically in jurisgenerative processes may exert negative influences on how societies perceive political bonds.

The second reason points to the English narrative that makes the out-of-Europe approach unavoidable. Within jurisgenerative processes, the law has traditionally acted as a bridge linking the 'reality to an imagined alternative',<sup>137</sup> leading communities 'from one state of being ... to a reasonably clear, even if not yet fully crystallized, ... alternative destination'.<sup>138</sup> Yet, as Welby states, 'Reimaging will inevitably happen'. If Britain does not manage Brexit and its social, political, and legal consequences, the acts of imagination will 'occur thoughtlessly through the mere passage of time, in which case it is likely to be bad'.<sup>139</sup> Or, even worst, the mental fog might be turned into a jurisgenerative process, where the out-of-Europe navigation will lead towards unchartered and perilous oceans that may make 'the country ... collapse into anarchy'.

To counter this possibility, *Perfidious Albion* hints at a disquieting solution. With its admixture of legalism and politics, the mental fog is better than nothing. 'No-one wants anarchy'. 'No-one wants chaos'. People 'want consistency. They want a safe, predictable, efficient country that runs like a well-oiled machine. That's what they want ... and now we can give it to them without taking away all the stuff they love about the past'.<sup>140</sup> It can also give the illusion that, so far, no nation has been so brave to rule—rudderless—the waves of unchartered, perilous, and deadly seas like the unchained (but hopefully not unbridled) Britannia is now doing.

**Funding** Open access funding provided by Università degli Studi di Verona within the CRUI-CARE Agreement.

**Open Access** This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

## References

- Ackerman, Bruce. 1989. Constitutional Politics/Constitutional Law. *Yale LR* 99: 453–547.
- Ackerman, Bruce. 1991. *We the People: Foundations*. Cambridge MA, London: Belknap Press.
- Barnard, Catherine. 2022. Retained EU law in the UK legal orders: Continuity between the old and the new. In *Research Handbook on Legal Aspects of Brexit*, ed. Łazowski A Cygan, 98–120. Cheltenham and Northampton MA: Edward Elgar.

<sup>137</sup> Watson (1988), 36.

<sup>138</sup> Dougan (2018), 67.

<sup>139</sup> Welby (n 1) 19.

<sup>140</sup> Byers (2018), 320.

- Bell, Duncan. 2019. Anglosphere: Empire Redivivus. In *The Anglosphere. Continuity, Dissonance and Location*, ed. B. Wellings and A. Mycock, 38–55. Oxford: OUP.
- Benhabib, Seyla. 2006. Democratic Iterations: The Local, the National, and the Global. In *Another Cosmopolitanism The Berkeley Tanner Lectures*, ed. S. Benhabib and R. Post, 45–80. New York: Oxford University Press.
- Bennett Thomas, D.C., and Olivia Reilly. 2020. A Coleridgean dystopia: Formalism and the optics of judgment. In *Law and Imagination in Troubled Times. A Legal and Literary Discourse*, ed. R. Mullender, et al., 206–238. Abingdon and New York: Routledge.
- Black, Jeremy. 1997. *Maps and Politics*. Chicago: Chicago University of Chicago Press.
- Butler, Graham. 2022. The EU Customs Union, free movement of goods, and enforcement mechanisms in the Protocol on Northern Ireland; a legal appraisal. In *Research Handbook on Legal Aspects of Brexit*, ed. Łazowski A Cygan, 175–197. Cheltenham and Northampton MA: Edward Elgar.
- Byers, Sam. 2018. *Perfidious Albion*. London: Faber & Faber.
- Carl, Noah, et al. 2019. European but not European enough: An explanation for Brexit. *European Union Politics* 20: 282–304.
- Carlyle, Thomas. 1840. *Chartism*. London: James Fraser.
- Cartwright, Anthony. 2017. *The Cut*. London: Peirene Press.
- Christian, Bonnie. 2020. Brexit news: Union Jack flag comes down as Britain's time in EU comes to an end. Evening Standard (online), 31 January 2020, available at <https://www.standard.co.uk/news/world/brexit-eu-parliament-brussels-a4350591.html>. Accessed 14 Dec 2022
- Coe, Jonathan. 2019. *Middle England*. London: Penguin.
- Crowe, Richard. 2022. EU Finances Post-Brexit. In *Research Handbook on Legal Aspects of Brexit*, ed. A. Łazowski and A. Cygan, 470–490. Cheltenham and Northampton MA: Edward Elgar.
- Davies, William. 2020. *This is Not Normal: The Collapse of Liberal Britain*. London: Verso.
- Dicey, Albert V. 1885. *Lectures Introductory to the Study of the Law of the Constitution*. London: MacMillan & Co.
- Docherty, Thomas. 2018. Brexit: Thinking and Resistance. In *Brexit and Literature: Critical and Cultural Responses*, ed. R. Eaglestone, 181–195. London: Routledge.
- Dougan, Michael. 2018. An Airbag for The Crash Test Dummies? EU-UK Negotiations for a Post-Withdrawal “Status Quo.” *Common Market Law Review* 55: 57–100.
- Dowling, Emma. 2021. The social structure of Brexit and the crisis of globalisation. *Österreich Z Soziol* 46: 257–277.
- Edward, David. 2018. In Europe history is the unseen guest at every table. *Common Market Law Review* 55: 251–261.
- Ford, Richard T. 1999. Law's Territory (A History of Jurisdiction). *Michigan Law Review* 97: 843–930.
- Fox, Liam. 2019. Britain's place in the global trading system. Speech delivered at policy exchange in London. 1st February. Available at: <https://www.gov.uk/government/speeches/britains-place-in-the-global-trading-system>. Accessed 8 Jan 2023.
- Goodfellow, Maya. 2020. *Hostile Environment How Migrants Became Scapegoats*. London: Verso.
- Goodhart, David. 2017. *The Road to Somewhere*. The Populist Revolt and the Future of Politics: London, Hurst Publishers.
- Harrison, Melissa. 2018. *All Among the Barley*. London: Bloomsbury.
- Hazell, Richard, Charlotte Sayers-Carter. 2022. Reforming the Prerogative. The Constitution Unit, UCL. Available at: [https://www.ucl.ac.uk/constitution-unit/sites/constitution\\_unit/files/198\\_reforming\\_the\\_prerogative.pdf](https://www.ucl.ac.uk/constitution-unit/sites/constitution_unit/files/198_reforming_the_prerogative.pdf). Accessed on 14 Apr 2023.
- Helen, Baxendale, and Ben Wellings. 2019. Underwriting Brexit. The European Union in the Anglosphere Imagination. In *The Anglosphere. Continuity, Dissonance and Location*, ed. B. Wellings and A. Mycock, 207–223. Oxford: OUP.
- Henderson, Ailsa, et al. 2017. How Brexit was made in England. *The British Journal of Politics and International Relations* 19: 631–646.
- Hill, Christopher. 2016. *A Turbulent, Seditious and Factious People: John Bunyan and His Church*. London: Verso.
- Howland, Peter J. 2022. New World wine and the evolution of universal, vernacular, metro-rural and indigenous idylls. In *The Routledge Handbook of Wine and Culture*, ed. S. Charters, 259–268. Abingdon and New York: Routledge.
- Johnson, Boris. 2019. Full text of Boris Johnson's resignation letter and PM's reply. The Guardian, 9 July 2018, available at <https://www.theguardian.com/politics/2018/jul/09/full-text-of-boris-johnsons-resignation-letter-to-the-pm>. Accessed on 10 Dec 2022



- Josephine, Waters Bennett. 1956. Britain among the Fortunate Isles. *Studies in Philology* 53: 114–140.
- Kirby, James. 2019. A.V. Dicey and English constitutionalism. *History of European Ideas* 45: 33–46.
- Koegler, Caroline, et al. 2020. The colonial remains of Brexit: Empire nostalgia and narcissistic nationalism. *Journal of Postcolonial Writing* 56: 585–592.
- Kwarteng, Kwasi, et al. 2012. *Britannia Unchained Global Lessons for Growth and Prosperity*. London: Palgrave MacMillan.
- Larik, Joris. 2020. Brexit, the EU-UK Withdrawal Agreement, and Global Treaty (Re-)Negotiations. *American Journal of International Law* 114: 443–462.
- Łazowski, Adam. 2022. And then they were (again) twenty-seven: The EU-UK Withdrawal Agreement. In *Research Handbook on Legal Aspects of Brexit*, ed. Łazowska A Cygan, 73–97. Cheltenham and Northampton MA: Edward Elgar.
- Martinico, Giuseppe. 2023. *The Tangled Complexity of the EU Constitutional Process. The Frustrating Knot of Europe*, 2nd ed. Abingdon and New York: Routledge.
- Martinico, Giuseppe, and Marta Simoncini. 2020. Wightman and the Perils of Britain's Withdrawal. *German Law Journal* 21: 799–814.
- McEwan, Ian. 2019. *Machines Like Me*. London: Jonathan Cape.
- McLeod, John. 2020. Warning signs: Postcolonial writing and the apprehension of Brexit. *Journal of Postcolonial Writing* 56: 607–620.
- Meredith, Sam. 2022. UK Prime Minister Boris Johnson resigns. CNBC online, 7 July 2022. Available at <https://www.cnbc.com/2022/07/07/boris-johnson-resigns-as-uk-prime-minister.html>. Accessed on 16 Dec 2022.
- Mullender, Richard. 1997. Context, Contingency and the Law of Negligence (or from Islands to Islands of Time). *Bracton Law Journal* 29: 23–33.
- Mullender, Richard. 2017. The Meaning of Miller: A Meditation on the Politics of the Legal Constitution. *Revista General De Derecho Público Comparado* 22: 1–27.
- Mullender, Richard. 2018. Transmuting the Politico-Legal Lump: Brexit and Britain's Constitutional Order. *Cardozo Law Review* 39: 1020–1038.
- Namasake, Eva. 2019. The Anglosphere, Race and Brexit. In *The Anglosphere. Continuity, Dissonance and Location*, ed. B. Wellings and A. Mycock, 224–240. Oxford: OUP.
- Nicolini, Matteo. 2022. *Legal Geography. Comparative Law and the Production of Space*. Cham: Springer.
- Nicolini, Matteo. 2020. Against the failure of the legal imagination. Literary narratives, Brexit and the fate of the Anglo-British Constitution. In *Law and Imagination in Troubled Times A Legal and Literary Discourse*, ed. R. Mullender, et al., 239–258. Abingdon and New York: Routledge.
- Nicolini, Matteo, et al. 2020. Imagination in Troubled Times, An Introduction. In *Law and Imagination in Troubled Times. A Legal and Literary Discourse*, ed. R. Mullender, et al., 1–12. Abingdon and New York: Routledge.
- Oakeshott, Michael. 1939–1940. The Claims of Politics. *Scrutiny*, 8:146–151
- Paulina, Ochoa Espejo. 2020. *On borders. Territories, legitimacy, and the rights of place*. Oxford: OUP.
- Perrin, Thomas. 2022. *La région au XXIe siècle*. Bruxelles: Peter Lang.
- Robert, Brett Taylor, and L.M. Wilson Adeleine. 2023. Legislating for a Post-Brexit Scotland: Scottish Parliamentary Scrutiny of UK Statutory Instruments on Retained EU Law. *Edinburgh Law Review* 27: 34–63.
- Rose, Richard. 1982. *Understanding the United Kingdom*. London: Longman.
- Sanghera, Sathnam. 2021. *Empireland*. London: Penguin.
- Schmitt, Carl. 1950. *Der Nomos Der Erde: Im Volkerrecht Des Jus Publicum Europaeum*. Duncker & Humblot: Berlin. English edition: Schmitt C (2006). *The Nomos of the Earth in the International Law of the Jus Public Europaeum* (trans: Ulmen, G.L.). New York, Telos
- Self, John. 2020. How Brexit has reshaped the British novel. Available at <https://www.penguin.co.uk/articles/2020/01/how-writers-responded-to-brexit-in-novels>, Accessed on 23 Dec 2022
- Sennett, Richard. 2019. *Building and Dwelling. Ethics for the City*. London: Penguin.
- Shadell, Talia (2020) Inside Boris Johnson's exclusive Brexit bash with English sparkling wine but no champagne. *Mirror* (online), 31 January 2020, available at <https://www.mirror.co.uk/news/politics/inside-boris-johnsons-exclusive-brexit-21401411>. Accessed 14 Dec 2022
- Shaw, Kristian. 2021. *Brexlit*. London: Bloomsbury Academic.
- Smith, Ali. 2016. *Autumn*. London: Penguin.
- Smith, Zadie. 2018. Fences: A Brexit Diary. In *Feel Free: Essays*, ed. Z. Smith, 20–34. London: Hamish Hamilton.

- Smith, Ali. 2019. 'I thought it would be about the seasons': Ali Smith on writing Autumn. *The Guardian. Culture*, 21 September 2019. Available at <https://www.theguardian.com/books/2019/sep/21/i-initi-ally-thought-it-would-be-about-the-season-ali-smith-on-writing-autumn>. Accessed on 23 Dec 2022
- Steven, Kettel, and Peter Kerr. 2021. The Brexit Religion and the Holy Grail of the NHS. *Social Policy & Society* 20: 282–295.
- Tombs, Robert. 2022. *This Sovereign Isle*. Britain In and Out of Europe. London: Allen Lane.
- Wager, Alan. 2022. Brexit impact on the political system of the United Kingdom. In *Research Handbook on Legal Aspects of Brexit*, ed. Łazowska A Cygan, 17–32. Cheltenham and Northampton, MA: Edward Elgar.
- Ward, Ian. 1999. *Shakespeare and the Legal Imagination*. London: Butterworths.
- Ward, Ian. 2022. *The Trials of Charles I*. London: Bloomsbury.
- Ward, Stuart. 2023. *United Kingdom a Global History of the end of Britain*. Cambridge: CUP.
- Watson, Alan. 1988. *Failures of the Legal Imagination*. Philadelphia: University of Pennsylvania Press.
- Watt, Gary. 2018. Sovereigns, Sterling and 'Some Bastards too!': Brexit Seen from Shakespeare's King John. *Journal of International Dispute Settlement* 9: 58–82.
- Welby, Justin. 2018. *Reimagining Britain: Foundations for Hope*. London: Bloomsbury.
- Welby, Justin. 2022. *The Power of Reconciliation*. London: Bloomsbury.
- Wellings, Ben. 2019. *English Nationalism, Brexit and the Anglosphere: Wider Still and Wider*. Manchester: Manchester UP.
- Wellings, Ben. 2018. Brexit and English Identity. In *The Routledge Handbook of the Politics of Brexit*, 1st ed., ed. P. Diamond, et al., 147–156. Abingdon and New York: Routledge.
- Wilson, Gary. 2019. Making Sense of Brexit: The Legal, Political and Global Context. *Revista General de Derecho Público Comparado* 25: 1–35.

**Publisher's Note** Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.