

## INTRODUCTION

The book the reader has in her/his hands is not a chronicle of Brexit, nor a painstaking reconstruction of the event in all its normative or jurisprudential aspects. Instead, it is a book about the British Constitution facing the test of Brexit. An arduous, complex and risky test, which for years has put institutions, parties, judges and social bodies under stress, decreeing a passage of historic significance with deep political and legal implications, as well as socio-economic and geo-strategic consequences still to be defined in their real dimensions.

The Constitution and Brexit, then. A fascinating combination for a scholar of comparative constitutional systems who has been assiduously working on the institutional dynamics of the United Kingdom for several years now: the history, the transformations, the cornerstones, modernity and anachronisms, the relationship between political life and constitutional balances, the strength of tradition and the spirit of innovation. And much more besides, delving into the mine of interesting insights that such a peculiar but nevertheless central order in the history of constitutionalism is able to offer. In short, in two words: the British Constitution.

Well, in this context, in the years immediately following the global financial crisis that began in 2007-2008, an issue started to make its way into the British public debate that at first seemed merely eventual and academic but with the passage of time it became increasingly topical and concrete: the exit of the United Kingdom from the European Union. Is there a *dies a quo* to mark the beginning of this process? Yes, there is; but it is not what many think, namely the date of the referendum (23<sup>rd</sup> June 2016). The real trigger moment, as I explain in the book, dates back to the 2014 European Parliament elections. I remember that when the results were announced, with the resounding exploit of the Brexiteer party *par excellence*, Nigel Farage's UKIP, I immediately had the feeling that something sensational was brewing in British political life, a cleavage that would dominate the field for quite some time. At that time, I had just published a monograph on the history of English legal and political culture, in which I showed the inseparable and peculiar relationships between Rule of Law, the affirmation of in-

dividual and collective rights, constitutional transformations and the increasingly crucial role of political parties and the figure of the Prime Minister. I concluded that book with some problematic considerations on the United Kingdom's membership in the EU, explaining the many underlying reasons for a controversial membership, already the subject of a referendum in 1975, never fully accepted by a nation anchored to different features than those of the Continent. A turning point was looming on this issue, to be followed closely regardless of the final outcome.

However, the following months were dominated by the Scottish independence referendum, which I was lucky enough to follow from Edinburgh. Reflections focused first on the concrete risks of a break-up of Britain, and then, following the "No" vote victory, on the implications of that referendum experience on devolution. And yet I knew perfectly well that Brexit would soon return as the central issue for my subsequent studies. The reality appeared before the eyes with the 2015 General Elections, when the Conservative Party included in its Electoral Manifesto the renegotiation of the outlines of UK membership of the European Union and the holding of a referendum on new membership. On these profiles I began to publish a number of papers that gave an account of what was happening and that sought some keys to understanding where the process might lead.

Like almost everyone else, I thought that the issue would end with the prevailing Remain vote in the referendum. But things didn't turn out that way at all. On the night of the vote count, between Thursday the 23<sup>rd</sup> and Friday the 24<sup>th</sup> of June 2016, I realised about an hour after midnight that, contrary to first impressions, something was not going the way many, and myself among them, had predicted and hoped. Despite the fact that even from the more distinctly pro-Leave front there were statements admitting their imminent defeat, from the industrial belt in the north of England results were beginning to come in against the trend: a traditionally Labour area was voting quite massively for Leave. From that moment on, the avalanche was unstoppable, until at first light Prime Minister David Cameron admitted defeat and consistently announced his resignation.

That morning, I had the distinct impression that, given the systemic dimensions of what had happened, my scientific and academic career would take a turn and from that day onwards would be characterised by a *fil-rouge*: Brexit, in all its varied facets.

I was leaving for New York, a trip that had long been planned, not least because of the pro-Remain prediction, but first I managed to organise a workshop with my staff, to be held at Milano-Bicocca University on my return, as an opportunity to reflect on what had happened and on the thousands of questions that the choice of the British people had opened up, for

the future of the United Kingdom but also of the European Union. It was a valuable opportunity for academic discussion, perhaps the first held in Italy after the referendum.

From that moment on, and then for many years, Brexit has never left me. I have followed step by step, day by day, the developments, the accelerations, the brakes, the contradictions, the negotiations, the agreements, the torments of the parties, the parliamentary debates and votes, the Governments' guidelines, the jurisprudence of the Courts, the manifestations, the conclusions and, above all, the reflections of British doctrine, often no less uncertain and contradictory than the actions implemented by the actors of political and institutional life. Truly a bottomless pit of suggestions, hypotheses, events and twists and turns, in a years-long barrage that not even a playwright in great shape could have imagined in the same terms.

As far as I am concerned, the result consists of dozens of scholarly works and also various journalistic contributions (articles, interviews, appearances on radio and television programmes, records of podcasts and videos for the web): the proof of an interest in the subject that immediately transcended the boundaries of the academic world and which I tried to satisfy by explaining, to a wider audience than that usually addressed by those in my profession, the constitutional articulations involved in the process, which are never trivial and often particularly difficult for those who are not familiar with them. In my professional activity I have always attributed an important value to scientific dissemination, in the conviction, little shared in Italy but a common heritage for those who know British culture, that knowledge should not be the exclusive prerogative of academics, interested in exchanging it only among themselves with a language that is sometimes esoteric, often boring and almost always repulsive. On the contrary, the dialogue with the public has served as a stimulus for me to refine clarity of exposition, measuring myself against the narrowness of publishing time and space. Therefore, I also consider these works an integral part of my scholarly production, and the reader of this book will find, especially in Chapter 5, further elaboration and development of certain concepts generated precisely in journalism.

In all my numerous scholarly works, my spirit has always been animated by an infinite curiosity for what was happening before our eyes, by a deep passion for the issue and for the institutional and cultural context in which it unfolded, and also by a desire to bring a contribution to the scholarly debate that was totally unrelated to my basic convictions on the United Kingdom's membership of the European Union, which remain those of an old pro-European. Over all these years I have always been interested in understanding the underlying reasons for the choice made and its constitutional implications, the significance of the moves and decisions of the insti-

tutional bodies, the new tracks of the relationship with the European institutions. So, years of observations, thoughts, considerations and opinions, very personal and as such obviously highly debatable, but animated precisely by a purely scientific inspiration.

Then, as happens with all things in life, the Brexit parable came to an end. With the Trade and Cooperation Agreement, signed on Christmas Eve 2020, the story has come to a conclusion, although obviously questions and anxieties related to the consequences of Brexit for the future of both parties remain open.

Reaching the end of this long journey, as perilous as it is exhilarating, I wanted to engage in one last publishing operation. This book is the result of years of study and reflection, conferences and publications, repeated comparisons with colleagues and constant observations of political events. Having at my disposal a considerable amount of scientific material that had already been produced, I proceeded to deconstruct it, subject it to empirical verification, correct it where necessary, reconstruct it on a different basis and with a different architecture, enrich it with entirely new considerations and arguments, and finally update it to everything that had happened until the beginning of 2024.

In the light of all this, I think the meaning of the opening statement is well explained. In this sense and in these terms the book is a reflection on the British Constitution grappling with the issues raised by Brexit. A valuable opportunity to monitor its health, its proverbial capacity for adaptation, the persistence of that flexibility that constitutes the essential feature of its being uncoded. The text assumes two keys to interpretation, valid to accompany all the way, as fundamental canons on which its architecture is shaped. The first is in the conviction that the constitutional law of the United Kingdom, and even more so a phenomenon such as Brexit, cannot be explained and understood if one does not proceed in the analysis by interweaving law and politics, that is, on the one hand, principles, norms and customs, and, on the other, ideas, parties, leaders, strategies, conveniences and opportunisms; in short, institutional rules and political dynamics. The second, almost an obligatory logical consequence of the first, claims to focus on the key figure of modern British democracy: the Prime Minister. The parable of Brexit is drawn and marked to a large extent by the decisions, right or wrong, of the three Conservative Prime Ministers who have succeeded one another in Downing Street over these years: David Cameron, Theresa May, Boris Johnson. This is, of course, an entirely neutral consideration, i.e. it completely disregards any value judgement on the directions taken by the three leaders. It only intends to show the decisive role of this institution, for better or for worse; a role that is assured to it by its pe-

culiar constitutional position and by the political linearity with which it is habitually acquired by those who hold the leadership of the majority party in the Commons.

Consequently, the scanning of the Chapters is patterned on these two fundamental parameters and, also in the light of what has been said so far, cannot prescind from a preliminary historical analysis of the relations between England, then the United Kingdom of Great Britain, and the main nations of the European Continent, if only to emphasise that character of mutual otherness that helps to explain the historical and cultural *humus* that formed the background to the British decision to withdraw from the European Union.

Having defined the historical context in the first Chapter, the causes that led to the referendum will be investigated in the second Chapter, paying particular attention to the strategies developed by PM Cameron in the political and institutional framework in which he was forced to move during the years of the Coalition Government and after the return of the One-Party Government.

The third Chapter will be devoted entirely to the Brexit Referendum, its legal boundaries and political implications. There will be an examination of the constituent law, on a procedural and regulatory level; an evaluation of the characters of the referendum campaign, which was very un-British, indeed laden with distortions of reality and even tragic events; a numerical and political anatomy of all the results of the vote, which are all the more interesting when broken down and reread in all their explanatory potential of the views of British society. Finally, all the necessary space will be devoted to a thorough reflection on the constitutional value of the referendum and its final result, attempting to move away from traditional doctrinaire oppositions to attempt a dynamic and realistic reading of the role assumed by popular deliberations in today's British Constitution.

The fourth Chapter will consider the highlights of Brexit that occurred during Theresa May's premiership: from the government's guidelines to the judicial issues, from the activation of Art. 50 TEU with the start of the difficult negotiations with the European Union to the early dissolution of the House of Commons; from the reaching of the first agreement to the failure of parliamentary ratification; from the resignation of the Prime Minister to her replacement as leader of the Conservative Party. In short, an infinite amount of material to describe and evaluate, an indispensable key to understanding the profound criticality of the situation opened up by the referendum result and the further developments of the process.

Developments that will be described and explained in the fifth Chapter, up to the completion of the parable in the sign of Boris Johnson and his

“*Get Brexit Done!*” slogan. A slogan as stentorian as its proponent’s style but set in a context complicated by a thousand factors. However, we will try to understand how and why it comes to the definition of a divorce treaty between the UK and the EU, to the celebration of Brexit Day and then to the conclusion of the good neighbourly agreement between two entities that do not love each other but that at least must respect each other.

Finally, the sixth and final Chapter will reflect on the consequences of Brexit for the future of the UK (and, by extension, also of the EU without British membership anymore), of course on a properly constitutional and political level. Sovereignty, form of state, form of government, political parties: these will be the conceptual and normative parameters on which we will focus our analysis and considerations, in order to understand whether and to what extent Brexit has already impacted on the British Constitution, triggering transformative processes and restorative braking, and what repercussions it may still have in the near future.

Therefore, a book that is anything but aseptic and neutral: each passage is described in its facts and analysed in its implications, but above all it is interpreted and evaluated in its legal and political dimension. On the basis of which hermeneutic canons? My own, of course! All the numerous judgments expressed in the text are exclusively the fruit of the convictions I have matured in these years of studying the phenomenon, and of course they are based on reasoning and arguments that I carefully illustrate and which I, in turn, submit for the evaluation of the reader and the entire scientific community. All those who will have the patience to enter the text will find expressed many theses and opinions often in open contrast with the mainstream of British, Italian or other schools of thought. Beginning with the book’s basic thesis: Brexit was not caused by the whim of a Prime Minister or by contingent chance; on the contrary, it is an event with deep roots, with questionable but real and persistent motivations in the social body, with historical and cultural specificities and peculiarities that have always animated the essence of Englishness. Of course, my hope is not that the reader will share my views but only that, finding them clearly argued and not meaningless, he will enjoy a stimulating and non-trivial read. An intellectual adventure in the meanders of a process that will go down in history. Special thanks to my wife Susanna, who read and reread the text at various stages and then corrected the drafts with her usual care and dedication. Of course, any oversights and errors are entirely my responsibility.

*Claudio Martinelli*