Revisiting Brexit: Disruption, Disintegration, Distraction and Defeat

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Oliver Garner, *Constitutional Disintegration and Disruption: Withdrawal and Opt-Out from the European Union* (Oxford University Press 2025)

Brexit

Ten years ago, on 23 June 2016, the citizens of the United Kingdom voted in a referendum to leave the European Union. That fateful, and unexpected, vote opened an unprecedented process: for the first time ever an EU member state embarked on withdrawing from the EU – a possibility explicitly foreseen in EU primary law, since the drafting of the Constitutional Treaty, and then the adoption of the Lisbon Treaty. Yet, as expected, the process of leaving the EU proved anything but easy, and Brexit resulted in an embarrassing spectacle. In fact, after the UK formally notified its intention to leave the EU in accordance with Article 50 TEU in March 2017, it took two UK general elections, three governments, and three requests for extension of the two-year negotiating period (all approved unanimously by the European Council) before the UK exited the EU on 31 January 2020, in accordance with the terms of the Withdrawal Agreement.[1] The Withdrawal Agreement, however, established an 11-month

[1]Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, O.J. 2020, L 29/07.

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transition period, that *de facto* kept the UK in the EU for almost an additional year, during which the parties negotiated a new Trade & Cooperation Agreement,[2] which entered into force provisionally on 1 January 2021 and formally as of 1 May 2025.

In the past decade, a solid body of scholarship has examined the law and politics of Brexit,[3] mapping both the institutional dynamics and the substantive consequences of the process. On the UK domestic side, academics have explored how the referendum disrupted the British party system,[4] and challenged the principle of parliamentary sovereignty in the UK;[5] evaluated how the withdrawal from the EU impacted the British constitution, weakening its system of human rights protection;[6] and examined in detail two rulings delivered by the UK Supreme Court: *Miller I*,[7] requiring the government to obtain parliamentary authorisation before notifying its intention to trigger Article 50 TEU, and *Miller II*,[8] ruling that Prime Minister Boris Johnson's prorogation of Parliament to avoid a negative vote on the draft Withdrawal Agreement was unlawful. On the EU side, instead, several books in law and political science have reflected on the impact of Brexit on Euroscepticism;[9] on the legal mechanisms of exit,[10] including the possibility for a withdrawing member state to revoke its intention to leave, as recognised by the European Court of Justice in *Wightman*;[11] on the external relations of the EU,[12] as well as on the differentiated modalities by which the EU

[2]Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, O.J. 2021, L 149/10.

[3]*See* F. Fabbrini (ed.), *The Law & Politics of Brexit* (Oxford University Press 2017); F. Fabbrini (ed.), *The Law & Politics of Brexit. Volume II: The Withdrawal Agreement* (Oxford University Press 2020); F. Fabbrini (ed.), *The Law & Politics of Brexit. Volume III: The Framework of New EU-UK Relations* (Oxford University Press 2021); F. Fabbrini (ed.), *The Law & Politics of Brexit. Volume IV: The Protocol on Ireland/Northern Ireland* (Oxford University Press 2022); F. Fabbrini (ed.), *The Law & Politics of Brexit. Volume V: The Trade & Cooperation Agreement* (Oxford University Press 2025).

[4]G. Evans and A. Menon, *Brexit and British Politics* (Polity Press 2017).

[5]M. Elliott et al. (eds.), *The UK Constitution after* Miller (Hart Publishing 2020).

[6]V. Bogdanor, *Beyond Brexit: Britain's Unprotected Constitution* (Bloomsbury 2019).

[7]*Miller* [2017] UKSC 5.

[8]*R (on the application of Miller)* v *the Prime Minister and Cherry* v *the Advocate General* [2019] UKSC 41.

[9]C. De Vries, *Euroscepticism and the Future of European Integration* (Oxford University Press 2018).

[10]M. Dougan, *The UK's Withdrawal from the European Union: A Legal Analysis* (Oxford University Press 2021).

[11]ECJ 10 December 2018, Case C-621/18, *Wightman* v *Secretary of State for Exiting the European Union*, ECLI:EU:C:2018:999.

[12]J. Santos Vara and R. Wessel (eds.), *Research Handbook on the International Dimension of Brexit* (Routledge 2021).

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interacts with its neighbours.[13] Furthermore, given the importance of the 1998 Belfast Good Friday Agreement to secure peace in Northern Ireland,[14] a relevant segment of the literature has specifically explored the impact of Brexit on the island of Ireland,[15] also by studying in detail the Protocol on Ireland/Northern Ireland attached to the Withdrawal Agreement, and its consequences.[16]

At the same time, relevant literature exists on several substantive aspects of Brexit, including its impact on, among others, financial services,[17] free movement of people and citizens' rights,[18] and European defence and security.[19] In fact, it will be remembered that the two Brexit treaties have different remits. The Withdrawal Agreement – which is 177 pages long in the EU *Official Journal* – primarily settled the terms of exit, defining the budgetary contributions that the UK must pay, introducing a special regime to protect the rights of EU citizens resident in the UK, and UK citizens resident in the EU, and handling the problems that Brexit caused to the island of Ireland, all while extending the administrative and judicial oversight of the European Commission and European Court of Justice. The Trade & Cooperation Agreement, instead, focused on governing future EU-UK relations and is much longer in size – 2,539 pages of the EU *Official Journal*. Yet, the Trade & Cooperation Agreement is a thin free trade deal and it effectively brings about a more abrupt separation between the EU and the UK, as made evident also by the absence of a meaningful role for the European Court of Justice. As such, multiple studies have dovetailed on what new terms the EU and the UK interplay post-Brexit, for example in the fields of competition law,[20] or data protection.[21]

Oliver Garner's recent book *Constitutional Disintegration and Disruption* adds an important contribution to the academic debate on Brexit. In this volume, Garner takes a much longer historical view of Brexit, which contextualises the legal analysis of the UK withdrawal from the EU in light of the law and policy of

[13]J.E. Fossum and C. Lord (eds.), *Handbook on the European Union and Brexit* (Edward Elgar 2023).

[14]Agreement reached in the multi-party negotiations, 10 April 1998.

[15]*See* M.C. Murphy and J. Evershed, *A Troubled Constitutional Future: Northern Ireland after Brexit* (Cambridge University Press 2024).

[16]C. McCrudden (ed.), *The Law & Practice of the Ireland-Northern Ireland Protocol* (Cambridge University Press 2022).

[17]K. Alexander et al., *Brexit and Financial Services: Law & Policy* (Hart Publishing 2018).

[18]D. Sredanovic and B. Byrne (eds.), *Brexit and Citizens' Rights: History, Policy and Experience* (Manchester University Press 2024).

[19]C.A. Baciu and J. Doyle (eds.), *Peace, Security and Cooperation in Post-Brexit Europe: Risks and Opportunities* (Springer 2019).

[20]B. Rodger and A. Stephan, *Brexit and Competition Law* (Routledge 2023).

[21]E. Celeste et al. (eds.), *Data Protection and Digital Sovereignty Post-Brexit* (Hart Publishing 2023).

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opting-out of EU law – a practice in which the UK (together with Denmark and Ireland) excelled for 25 years before leaving the EU. It is this practice – which Garner calls disruption – that informs the book's interpretation of withdrawal as the manifestation of full-fledged disintegration. By reconnecting the EU law study of opt-outs – i.e. treaty-agreed derogations that exempt individual EU member states from participating in specific EU policy fields, namely Economic & Monetary Union, the Schengen *acquis* on the abolition of internal border controls, and the Area of Freedom, Security and Justice – with the analysis of withdrawal, this volume helps to identify a missing piece in the Brexit story. If the UK already enjoyed so many exemptions from EU law through opt-outs, why did it decide to leave the EU altogether?

From disruption to disintegration

Garner's book is conceptually structured in four parts. The first part (which includes Chapters 1 and 2) provides the theoretical framework for the analysis. The second part (which includes Chapters 3 and 4) focuses on opt-out protocols in the EU treaties and provides a narrative of pre-Brexit disruption. The third part (which includes Chapters 5 and 6) focuses on the withdrawal clause of Article 50 TEU and overviews the Brexit story as thus far the only example of formal legal disintegration in the EU. Finally, the fourth part (which includes Chapters 7, 8 and 9) advances a normative criticism of opt-outs and withdrawal, puts forward policy proposals for how to reform the opt-out clauses and Article 50 TEU, and concludes. The second and third parts of the book are substantively the most important, and they elegantly follow the same structure: Garner first examines the *telos*, form and functions of both the opt-out protocols and Article 50 TEU, and then provides an empirical law in action analysis of pre-Brexit disruption to the EU legal order, and then its disintegration as embodied by Brexit. This symmetrical approach greatly helps the reader in following Garner's reasoning.

In the part on opt-outs, Garner explains that these instruments 'have been driven by executive attempts to secure state interests and preferences at Treaty amendments' (p. 35). Consequently, since the Treaty of Maastricht of 1992, the EU has become a Union 'of bits and pieces'.[22] In the book, in particular, Garner focuses on more than half a dozen protocols – namely, in the current numeration of the EU treaties: Protocols No. 15, 16, 17, 19, 20, 21, 22 and 36 – which give some member states opt-outs from given areas of EU law, or flexibly allow them to opt-in and opt-out at will. Specifically, Garner examines the 'legal formulae' (p. 52) of opt-outs from Economic & Monetary Union, which exempted

[22]D. Curtin, 'The Constitutional Structure of the Union: A Europe of Bits and Pieces', 30 *Common Market Law Review* (1993) p. 17.

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Denmark and the UK (when it was a member state) from participating in monetary integration. He then surveys opt-out protocols from the Schengen *acquis*, detailing the 'flexible' (p. 56) opt-out that applies to the UK and Ireland, and the peculiar protocol on Schengen which allows Denmark to participate in Schengen while rejecting 'participation in the supranational order' (p. 59). Finally, Garner explores in detail the protocols of the EU treaties related to the Area of Freedom, Security and Justice, which allow the UK, Ireland and Denmark to opt-out, but also eventually permit the UK to flexibly opt-in into EU law measures dealing with criminal justice cooperation and transnational law enforcement.

After having examined the opt-outs as law on the books, Garner also offers a dynamic overview of their evolution, from the Treaty of Maastricht to the Treaty of Amsterdam, to the Treaty of Lisbon. As Garner explains, 'The "deepening" of European integration into new policy areas prompt[ed] reluctance from certain Member States to acquiesce to the extension of supranationalism' (p. 80). Furthermore, Garner emphasises how the push for opt-outs has consistently come from 'the 1972 Member States' (p. 83) – namely the UK, Denmark and Ireland, democracies with a strong tradition of parliamentary supremacy, and arguably a lesser drive to federalise than the founding six. In fact, 'no Member States other than the [UK], Denmark and Ireland constitutionalized such disruption in the form of Protocols exempting them from the creation and application of EU law' (p. 85). However, Garner puts a significant share of the blame for opt-outs on the UK. As he underlines, Denmark hid behind the UK in seeking an opt-out from Economic & Monetary Union (p. 102), and Ireland's opt-out from Schengen was 'compelled' (p. 111) by the UK, as it is a direct consequence of the UK's decision to remain outside the free movement zone, and Ireland's desire to preserve its Common Travel Area with the UK.

Garner ends his assessment of the disruption narrative by considering the 2016 New Settlement for the United Kingdom in the EU agreed by the European Council in February 2016:[23] this deal, which was negotiated by UK Prime Minister David Cameron ahead of the referendum, would have secured additional exemptions for the UK, to be later incorporated in the main text of the EU treaties. Specifically, the Settlement set up special protections for the status of non-Eurozone member states like the UK, introduced an emergency brake procedure that would have authorised the UK to suspend free movement of people when inward migration passed a critical threshold, and exempted the UK from abiding by the principle of 'ever closer union' enshrined in the EU Treaties' Preamble. In certain ways, therefore, the agreement orchestrated by the President of the European Council went quite far in sacrificing foundational EU principles

[23]European Council Conclusions, 19 February 2016, EUCO 1/16, Annex I ('A New Settlement for the United Kingdom within the European Union').

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to appease the British requests. Since the Settlement was conditional for its entry into force on a decision by the UK to remain in the EU, the Brexit referendum made the deal null and void.[24] Yet, as Garner argues, with the Settlement 'disrupted integration transitioned into the narrative of disintegration' (p. 137).

In the part on the withdrawal clause Garner examines the origins and the function of Article 50 TEU. He considers 'the partial precedents of withdrawal' (p. 140) – Algeria's decolonisation from France, and Greenland's exit from the European Economic Community in 1982, resulting in a 1985 *ad hoc* treaty arrangement[25] (now codified as Protocol No. 34) – and summarises also debates at the time of the 2003 Constitutional Convention. Garner then addresses the finality of Article 50 TEU, and argues that 'the telos of the withdrawal clause is contradistinct: to enable the repatriation of democratic subjecthood and juridical objecthood through the levelling down of constructive power as regulated by a supranational legal process' (p. 148). This formulation may be conceptually intricate, but ultimately Garner makes it descend from the European Court of Justice's holding in *Wightman* that 'Article 50 TEU pursues two objectives, namely first, enshrining the sovereign rights of a Member State to withdraw from the European Union and, secondly, establishing a procedure to enable such a withdrawal to take place in an orderly fashion'.[26] On this basis, Garner moves on to reassess the Brexit process, providing a detailed legal analysis of the 'narrative of disintegration' (p. 153).

In his longest chapter Garner overviews the legal twists and turns required for the UK to leave the EU. In particular, Garner dedicates attention to rulings by UK and EU courts, which have clarified the meaning of the various prongs of Article 50 TEU. These include the *Schindler* judgment of the Court of Appeals for England and Wales,[27] which rejected a legal challenge against the franchise rules limiting voting rights in the Brexit referendum to only UK citizens resident in the UK (p. 160), as well as of course the *Miller I* and *Wightman* judgments. Garner also discusses the *EP* judgment of the European Court of Justice,[28] which rejected a challenge by a UK citizen who had been removed from the electoral rolls for municipal elections in France, following the withdrawal of the UK from the EU (p. 206). At the same time, Garner refers to the internal UK legislation that was required to advance Brexit – from the EU (Notification of Withdrawal) Act 2017 to the EU (Withdrawal Agreement) Act 2020 – and briefly discusses the

[24] *See* Statement of the EU Leaders and the Netherlands Presidency on the Outcome of the UK Referendum, 24 June 2016, PRESS 381/16.

[25] Treaty amending, with regard to Greenland, the Treaties establishing the European Communities, O.J. 1985, L 29/1.

[26] *Wightman*, *supra* n. 11, para. 56.

[27] *Shindler* v *Chancellor of the Duchy of Lancaster* [2016] EWCA Civ 649.

[28] ECJ 9 June 2022, Case C-673/20, *EP v Préfet du Gers*, ECLI:EU:C:2022:449.

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Withdrawal Agreement, including its Protocol on Ireland/Northern Ireland, emphasising how this 'mandates a substantial continuation of the Union legal order within a devolved territory of a former Member State' (p. 207). As mentioned at the start of this piece, a large literature already existed on the Brexit process, and Garner's analysis, while useful, adds little new in this respect.

However, where Garner's book is most innovative and valuable is in weaving together the narrative of disruption and disintegration, presenting them as a continuum. As he underlines,

> Opt-outs have been presented as a means to prevent Member State withdrawal, and the possibility of Member State withdrawal has been presented as an incentive to prevent opt-outs. The withdrawal of the Member State that has been the leading protagonist in reserving constituent power prompts a reconsideration of the relationship between disrupted integration and disintegration. (p. 272)

To be clear, Garner is not a social scientist, and his book is not involved in the business of proving causation. But he makes a compelling case that the disruption to the EU legal order that the UK brought about for two decades through opt-outs – and which reached its apex in the infamous 2016 Settlement – foreshadowed the wholesale withdrawal which occurred with Brexit. This serves as a poignant normative counterpoint to the common argument made in political science rational choice literature claiming that differentiation is the necessary means to preserve an ever more diverse EU.[29] As Garner emphasises:

> The emergence of disintegration through Brexit may also require a reappraisal of the consequences and value of differentiated integration in the [EU]. The withdrawal of the key proponent of opt-outs means that a phenomenon that was regarded as a temporal form of disrupted or deferred integration at the time of the Treaty amendments may now more properly be considered to be deferred disintegration. (p. 272)

Hence, Garner concludes with a wise note of caution:

> Those who propose further differentiated integration as a solution to the EU's current challenges should also take heed. The short-term success of overcoming Member States vetoes to secure a Treaty amendment ratification can gestate a long-term legacy of disintegration. (p. 273)

[29] *See* F. Schimmelfenning and T. Winzen, *Ever Looser Union? Differentiated European Integration* (Oxford University Press 2020).

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Citizens and states

Besides examining the EU law of opt-outs and withdrawal, in his book Garner also develops a normative framework to assess them. In Chapter 2, Garner advances a 'dual-constituent thesis' (p. 13), which he subsequently applies to the Protocols and Article 50 TEU. Garner begins by framing the EU 'as falling between two extremes on the continuum of models of European integration and the functioning of opt-outs and withdrawals therewithin' (p. 8). Specifically, he states that the EU is neither an international treaty model, nor a federal order. On the one hand, if the EU were a simple international treaty, withdrawal under Article 50 TEU would be a form of *lex specialis* compared to the termination of treaties regulated by the Vienna Convention on the Law of Treaties, and opt-outs would be just a species of reservation, also foreseen by the Vienna Convention. On the other, if the EU were a federal legal order, withdrawal would be seen as secession, while opt-outs could be considered a form of federal differentiation.

Drawing inspiration from the philosophical work of the late Jürgen Habermas,[30] Garner claims that individuals ought to be seen as holding a dual constituent status as both nationals of Member States and citizens of the EU. Consequently, he posits that 'individuals should function both as *democratic subjects* in the creation of norms by the constituted legislative institutions, and as *juridical objects* in their reliance upon norms' (p. 27, emphasis in original). According to Garner's 'conceptual model' (p. 12), individuals in the EU have four distinct roles: (1) EU citizens *qua* democratic subjects; (2) EU citizens *qua* juridical objects; (3) nationals of a Member State *qua* democratic subjects; and (4) nationals of a Member States *qua* juridical objects (p. 27). In this model, individuals should therefore participate in EU construction – as well as in its disruption or destruction (a.k.a. opt-outs and withdrawal) – in their dual role as subjects (i.e. both EU citizens and national citizens), and be the addressees of the norms generated by the EU and the member states. Based on this framework, in Chapters 7 and 8 of the book, Garner embarks on a normative critique of how the opt-outs and the withdrawal clause operate, and puts forward multiple proposals on how to reform them.

With regard to opt-outs, Garner claims that 'the prevalence of opt-outs in the supranational constitutional order violates the quadripartite role of individuals' (p. 227). Since opt-outs are negotiated by member states, without the involvement of the representatives of EU citizens as such, they undermine 'the normative principle of equality between individuals *qua* democratic subjects' (ibid.). With regard to withdrawal, Garner also underlines the existence of normative deficiencies. On the one hand, he points out that paradoxically,

[30]J. Habermas, *The Crisis of the European Union: A Response* (Polity Press 2013).

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'withdrawal is a more acceptable phenomenon from the perspective of the integrity of the supranational order than opt-outs' (p. 230). On the other hand, however, he criticises the fact that withdrawal happens without the involvement of nationals of other member states, or indeed without any involvement of the representatives of EU citizens, and 'leads to the 'destruction of EU citizenship and the re-establishment of nationality of a constitutional state as the exclusive constituent status' of the individual (p. 232).

Garner's top-down, jurisprudential approach, however, lends itself to two criticisms – making this in my view the least convincing part of the book. First, the normative stance he embraces is itself debatable, and indeed his supranationalist conception of the EU is vividly questioned in legal and political theory. Without any intention to be exhaustive here, some scholars continue to view the EU primarily as a form of national administrative delegation, with the member states still remaining the core arenas of political legitimacy.[31] Others, instead, have explained that the unique EU model – which Garner places in between international law and federal orders – *is* federal, after all.[32] In Garner's book, these counter-arguments are not really debated – partially because the volume is primarily an EU law study of withdrawal and enlargement, rather than a pure work of legal theory. Yet, this sometimes leaves the feeling that normative theory is unnecessarily over-imposed on legal analysis.

Second, there is no escaping from the fact that, from a positive law perspective, Garner's normative framing of opt-outs and withdrawal runs afoul of EU law as it is. To be fair, this is a point Garner acknowledges, when he 'recognize[s] that Habermas' original argument was based upon the *hypothetical* method of a "rational reconstruction" of reality, and so may be challenged for not cohering with the material facts of European integration' (p. 9, emphasis added). Furthermore, elsewhere in the book he also admits that 'the EU Treaties has [sic] *not* created the preconditions for the supranational status to be a co-equivalent constituent status alongside nationality of a Member State' (p. 22, emphasis in original). In fact, according to Article 20 TEU, EU citizenship is derivative from member state nationality. On the basis of Article 48 TEU, amendments of the EU treaties require the unanimous consent of the member states – or, to be more precise, their nationals – but do not require approval by the European Parliament, which represents EU citizens. And Article 50(1) TEU states that a member state may unilaterally 'decide to withdraw from the Union in accordance with its own constitutional requirements'.

[31]P. Lindseth, *Power and Legitimacy: Reconciling Europe and the Nation State* (Oxford University Press 2010).

[32]S.R. Larsen, *The Constitutional Theory of the Federation and the European Union* (Oxford University Press 2021) (arguing that the EU is a case of federation, as opposed to a federal state).

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Certainly, Garner sets a normatively demanding benchmark for evaluating the law of withdrawal, coherent with an integrationist *Weltanschauung* of Europe. Because of the gap between the normative ideal and legal reality, however, some of his criticisms appear unpersuasive. In particular, Garner faults the European Court of Justice's ruling in *Wightman* for 'explod[ing] the dialectic tension between nationality of a Member State and citizenship of the [EU] as co-equivalent constituent statuses' (p. 232). Yet, in my view the European Court of Justice should not only be forgiven for ruling in the case as it did, but also praised for recognising that Article 50 TEU includes an implicit right to unilaterally revoke the notification of the intention to withdraw – a judicial defence of the principle of 'ever closer union'. As Garner himself must acknowledge, 'withdrawal is presented in the EU Treaties as an action that occurs on the plane of international relations between states rather than the constitutional plane between individuals' (p. 233), so it is difficult to see what else the European Court of Justice could have done. Ultimately, as he points out towards the end of the volume, 'disruption and disintegration are evidence that nationality of a Member State remains the dominant constituent status in Europe' and 'Disintegration has exposed the precarity of EU citizenship' (p. 273). Yet, this is the EU we live in, and changing it will require wide-ranging constitutional reforms. In the conclusion of his book, Garner advances several valuable yet ambitious proposals in this respect, and I will return to this below.

Defeat and distraction

What a difference ten years make. Since 2016 the world has changed, and so has the EU – making Brexit seem very *passé*. While at the time of the UK referendum a concern was that Brexit would trigger a domino effect, what we witness just five years after the UK withdrawal is really a more integrated EU. To begin with, the EU responded to the Covid-19 pandemic, which exploded in February 2020 and caused a worldwide crisis of 'biblical proportions',[33] by deepening to an unprecedented level its fiscal integration. To address the socio-economic consequences of the health crisis, the EU established a €750 billion Recovery Fund called Next Generation EU, which endows the EU with new borrowing and spending powers, while committing the EU to introduce new taxes to repay the debt.[34] Moreover, the EU responded to Russia's large-scale aggression against Ukraine, which started in February 2022 and marked a 'tectonic shift in European

[33]M Draghi, 'We Face a War Against Coronavirus and Must Mobilize Accordingly', Op-Ed, *Financial Times*, 25 March 2020.

[34]F. Fabbrini, *EU Fiscal Capacity: Legal Integration after Covid-19 and the War in Ukraine* (Oxford University Press 2022).

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history',[35] by adjusting its machinery of government to deal with the reality of war.[36] The EU leveraged its power in the field of defence industrial policy, it adopted unprecedented emergency interventions in the field of energy, it rolled out aggressive packages of sanctions against Russia, all while granting temporary protection to millions of refugees and consolidating its fiscal capacity to support Ukraine. Now, with Donald Trump back as President of the United States, the EU is further pushing defence integration,[37] while strengthening its internal resilience, economic competitiveness and strategic autonomy.[38]

The one to be most damaged by Brexit has thus been the UK. On the political side, the UK has experienced an unprecedented degree of instability, with five Prime Ministers rotating in government since 2016 and a bitter political discourse that still taints UK parties. On the economic side, moreover, Brexit has had a devastating impact on the UK economy. As evidenced in a recent study of the European Central Bank, 'estimates suggest that after the Brexit transition period, UK exports to the EU contracted by almost 40%'[39] while Brexit contributed to a decline in foreign direct investment flows 'between the EU and the United Kingdom of around 4%'.[40] Similarly an independent study of the US National Bureau of Economic Analysis calculated that 'Brexit had reduced UK GDP by 6% to 8%',[41] while impacting negatively also on employment and productivity.

In fact, reflecting important shifts in public opinion,[42] in the past few years the UK has tried to walk back on Brexit, resetting its relationship with the EU. In 2023, UK Prime Minister Rishi Sunak agreed with the EU to the Windsor Framework,[43] adjusting the Protocol on Ireland/Northern Ireland, and resolving a major political discord on the application of EU customs checks between

[35]Informal meeting of the Heads of State and Government, Versailles Declaration, 10-11 March 2022, para. 6.

[36]F. Fabbrini, *The EU Constitution in Time of War: Legal Responses to Russia's Aggression against Ukraine* (Oxford University Press 2025).

[37]European Commission & High Representative Joint White Paper for European Defence Readiness 2030, 19 March 2025, JOIN(2025) 120 final.

[38]*See* E. Letta, 'Much More than a Market: Speed, Security, Solidarity' (European Council 17 April 2024); and M. Draghi, 'The Future of European Competitiveness. Part A. A Competitiveness Strategy for Europe' (European Union, 9 September 2024).

[39]'Exploring EU-UK Trade and Investment four years after Brexit' ECB Occasional Paper Series No. 379, p. 3.

[40]Ibid.

[41]N. Bloom et al., 'The Economic Impact of Brexit', NBER Working Paper 34459, November 2025.

[42]*See* A. Mitchell, 'Brexit Regret among Leave Voters Hits Record High, Poll Finds', *The Independent*, 23 May 2023.

[43]Windsor Political Declaration by the European Commission and the Government of the United Kingdom, 27 February 2027.

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Northern Ireland and Great Britain. Through technical changes, the Windsor Framework contributed to rebuilding trust between the EU and the UK,[44] and the dividends of a more positive EU-UK relationship quickly spilled over to areas, including financial services,[45] research and space,[46] and trade.[47] Furthermore, following the landslide victory of the Labour Party in the general elections held in the UK in July 2024, the new UK Prime Minister Keir Starmer negotiated a re-rapprochement to the EU. In May 2025, in particular, the UK entered into a Security and Defence Partnership with the EU,[48] and agreed in principle to participate in the EU's energy market, link to its Emission Trading System, and set-up a common sanitary and phytosanitary area – accepting in all these cases dynamic alignment with EU law and the jurisdiction of the European Court of Justice.[49] In fact, the UK has now rejoined Erasmus, facilitating free movement of the youth,[50] and concluded with the EU also a deal on cooperation in competition enforcement.[51]

Several of these developments in EU-UK relations occurred before the publication of Garner's book, although little notice is paid to them in the volume, given its focus. These steps are limited, and only incremental, confirming how politically poisonous any efforts to reverse the outcome of Brexit is. These steps also do not undo Brexit, which is presumably why they are not discussed in a book about withdrawal. However, they implicitly confirm that withdrawal has been inherently seen as a failure – confirming Garner's view that 'the Brexit case study provides a cautionary tale for any Member State considering withdrawal in the future' (p. 234).

[44] *See also* House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland report, 'The Windsor Framework', 25 July 2023, HL Paper 237.

[45] *See* European Commission draft Memorandum of Understanding establishing a framework for financial services regulatory cooperation between the European Union and the United Kingdom of Great Britain and Northern Ireland, 17 May 2023.

[46] *See* European Commission press release, 'EU-UK Relations: Commission and UK reach political agreement on UK participation in Horizon Europe and Copernicus', 7 September 2023, IP/23/4374.

[47] *See* European Commission press release, 'Commission proposes one-off extension of the current rules of origin for electric vehicles and batteries under the Trade & Cooperation Agreement with the UK', 6 December 2023.

[48] *See* Council of the EU, Security and Defence Partnership between the European Union and the United Kingdom of Great Britain and Northern Ireland, 19 May 2025, Doc. 8709/25.

[49] *See* European Commission statement, 'A Renewed Agenda for European Union – United Kingdom cooperation: Common Understanding', 19 May 2025, sec IV.

[50] *See* European Commission statement, 17 December 2025.

[51] *See* European Commission press release, 'EU and UK agree to cooperate closely on competition matters', 25 February 2026.

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Reform or rot

Yet, Brexit cannot simply be dismissed as a fluke. On the one hand, the possibility that other member states in the future may seek to leave the EU cannot be entirely ruled out. Nationalist political movements are on the rise in many countries, and while the disastrous experiment of the UK's exit from the EU has given them reason to downplay their plans to withdraw from the Euro-area, or the EU as a whole, they have found other ways to 'disengage from international institutions'.[52] Political scientists have emphasised how, after Brexit, sovereigntist politicians in several member states quietly buried the prior calls to leave the EU, opting rather to hollow it out from the inside, preserving the economic benefits that follow from membership but disrespecting the values that bind the EU together.[53] This approach has had vicious consequences for the EU, incidentally strengthening the dynamic of legal disruption explored by Garner. This was most visible in the December 2025 European Council accord to grant a € 90 billion assistance loan to Ukraine, to keep it financially afloat in its war against Russia at a time when the US under Trump no longer provided support: to obtain the necessary unanimity of all 27 member states, the European Council agreed to give an 'opt-out' of sort to Hungary, Czechia and Slovakia, exempting them from having to bear any negative financial consequence of the loan.[54] The deal was technically formalised through enhanced cooperation,[55] and it is unclear how legally significant it is,[56] but it reflects a novel attempt to push differentiation among EU member states even on a core matter such as the EU budget.

[52]*See* A. Pacciardi et al., 'Beyond Exit: How Populist Governments Disengage from International Institutions', 100(5) *International Affairs* (2024) p. 2025.

[53]S. Fabbrini and T. Zgaga, 'Right-Wing Sovereignism in the European Union: Definitions, Features and Implications', 62(2) *Journal of Common Market Studies* (2024) p. 341.

[54]European Council conclusions, 18 December 2025, EUCO 24/25, para. 3.

[55]*See* Council Decision (EU) 2026/258 of 29 January 2026 authorising enhanced cooperation on the establishment of a Loan for Ukraine, O.J. 2026/258; and Regulation (EU) 2026/467 of the European Parliament and the Council of 24 February 2026 implementing enhanced cooperation on the establishment of the Ukraine Support Loan for 2026 and 2027, O.J. 2026/467.

[56]*See* European Commission proposal for a Council regulation amending Regulation (EU, Euratom) 2020/2093 laying down the multiannual financial framework for the years 2021 to 2027, COM(2026) 21 final, 14 January 2026: this regulation, which is necessary to allow the EU to issue debt to find Ukraine, requires unanimity for approval and was blocked for many months by Hungary's veto, with the support of Slovakia. *See* European Council meeting, 19 March 2026, EUCO 2/26 (reporting document supported by only 25 EU Heads of State and Government calling to approve the abovementioned regulation). Following elections in Hungary and the defeat of Prime Minister Viktor Orban, it was eventually approved as this article was going to print: *see* Council Regulation (EU) 2026/469 of 23 April 2026 amending Regulation (EU, Euratom) 2020/2093 laying down the multiannual financial framework for the years 2021 to 2027, O.J. 2026/469.

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On the other hand, Brexit was also a distraction and a decoy. For five long years the EU had to devote precious time, political energy and human resources to negotiate with the UK the terms of exit and new relationships. This diverted attention from other priorities, including tackling the rule of law crisis. Moreover, the EU ended up blaming Brexit purely on the UK's idiosyncratic relationship with Europe, and thus missed the opportunity to take more seriously the constitutional consequences of withdrawal, which in my view called for constitutional reforms.[57] French President Emmanuel Macron was the exception to the EU's business-as-usual approach to Brexit, and his efforts eventually led to the establishment of a Conference on the Future of Europe.[58] Yet, this innovative initiative proved underwhelming and ultimately no treaty change has taken place in the EU since Brexit[59] – not even to remove those provisions of the EU Treaties which still refer to the UK. The absence of constitutional reform has become all the more daunting as the EU recently embarked on the opposite of withdrawal – namely new enlargements. In response to the first conventional war in the European continent since World War II, unleashed by Russia, the EU has relaunched the enlargement process, especially towards Ukraine, Moldova, and the countries of the Western Balkans.

But how much can the EU further widen without eventually deepening its institutional structures? For how long can unanimity decision-making remain the rule of the game in crucial EU competence, from fiscal policy to defence? And how long will the EU tolerate legal disruptions? This is where Garner's book provides a final set of helpful ideas for EU treaty reform. With regard to opt-outs, Garner advances alternative options: 'The most radical reform proposal is to abolish opt-outs entirely' (p. 241), although he underlines that occasionally specific opt-outs may need to be retained – for example to preserve Ireland's Common Travel Area with the UK (p. 241). In these cases, he suggests that 'the maintenance of opt-outs should be subjected to a review process that is conducted periodically by the EU institutions' (p. 246). With regard to withdrawal, too, Garner advances multiple proposals, ranging from radical to more detailed ones, although he refrains from suggesting removing *tout court* the option to exit the EU. For Garner, 'radical proposals for reform would alter two dimensions of the operation of Article 50 TEU: its unconditionality and its unilaterality', requiring

[57]F. Fabbrini, *Brexit and the Future of the European Union: The Case for Constitutional Reform* (Oxford University Press 2020).

[58]*See* French President Emmanuel Macron, Letter pour une renaissance europeenne, 4 March 2019, available at https://www.elysee.fr/es/emmanuel-macron/2019/03/04/pour-une-renaissance-europeenne.fr, visited 26 April 2026 and Joint Declaration on the Conference on the Future of Europe, 10 March 2021, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_091_I_0001, visited 26 April 2026.

[59]M. Avbelj (ed.), *The Future of EU Constitutionalism* (Hart Publishing 2023).

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supranational conditions for withdrawal, and approval by all those holding EU citizenship. Short of that, Garner puts forward various suggestions for adjusting Article 50 TEU in view of the Brexit lessons, including introducing a requirement for a double decision before exit (p. 256), removing the possibility of a no deal withdrawal (p. 258), and preserving EU citizenship status after a member state leaves the EU (p. 260).

Garner's policy proposals – which align with the idealistic normative vision of European integration he has expounded in the book – are ambitious and reflect the view that 'any genuine attempt to go beyond the status quo of European integration may need to focus first on transforming citizenship of the [EU] into a genuine standalone status of first and last resort for individuals to exercise self-determination' (p. 267). Obviously, these proposals – like any other – run into the ordinary difficulty of changing the EU treaties, which require unanimity by all 27 member states for amendment. However, Garner's call for further progress on the road to ever closer constitutional union is to be praised and welcome. As comparative experience suggests, constitutions which over time lose the possibility of amendment tend to rot.[60] In 2010, an *EuConst* editorial argued that the EU was moving from a confederation to a convoy.[61] With Brexit, the EU lost one of its (largest) ships on its journey. The challenge remains that the EU's final destination – 'the federation of Europe' envisaged in the Schuman Declaration[62] – remains clouded in doubts. Yet, '*Ignoranti quem portum petat, nullus suus ventus est*' ('There is no favourable wind for the sailor who doesn't know where to go').[63]

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[60]*See* J. Lepore, *We the People: A History of the U.S. Constitution* (Liveright 2025) (arguing that the greatest innovation of the US Constitution is the philosophy of amendment and that the current trouble with the US is that its Constitution has practically become unamendable).

[61]Editorial, 'From Confederacy to Convoy: Thoughts about the Finality of the Union and its Member States', 6 *EuConst* (2010) p. 1.

[62]Schuman Declaration, available at https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en, visited 26 April 2026.

[63]Seneca, *Epistulae morales ad Lucilium*.

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