ICON-S British-Irish Chapter Annual Conference

The United Kingdom’s Withdrawal from the European Union (?)

Domestic and European Constitutional Implications

Court-Senate Suite, Collins Building, University of Strathclyde, 24 – 25 April 2019

PROGRAMME

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The decision of the United Kingdom to withdraw from the United Kingdom has destabilised the 1998 constitutional settlement on the island of Ireland. The United Kingdom Supreme Court’s judgment in *Miller v Secretary of State for Exiting the European Union* [2017] UKSC 5 has suggested a retrenchment within the United Kingdom to a very orthodox view of parliamentary sovereignty. Within Northern Ireland, the divided attitudes to Brexit can only have increased the probability of a border poll within the next five years. Irrespective of the outcome of such a poll, the very possibility raises several underexplored questions. How might public votes in Northern Ireland and Ireland be sequenced. Could the institutions of the 1937 Constitution accommodate reunification or would substantial amendment (or indeed a whole new constitution) be required? How would any move towards reunification affect the constitutional identity of the 1937 Constitution, as revised by the 1998 amendments? The purpose of this panel is to map out the terrain for future exploration on these issues, both from the perspective of comparative constitutional law and public policy. The paper presentations are intended to provoke reflections and suggestions.

**Christopher McCrudden**

*The Continuing Necessity of Consociationalism?*

Consociationalism is a central part of the Belfast-Good Friday Agreement; that much is clear. The question this paper considers is whether consociationalism would or should remain a central part of any all-island future constitutional settlement. Would the current role of consociational arrangements in Northern Ireland continue, and/or would a consociational foundation for the whole island be a valuable approach to adopt?

**John Morison**

*Ten Things You Need to Know before Thinking Seriously about Irish Unity*

Current political circumstances around Brexit have put the idea of Irish unity back on the more immediate agenda. Irrespective of the politics surrounding the desirability or likelihood of (re-) unification, there are a range of constitutional factors which need to be considered carefully before the issue could be put to a vote. While economic, cultural and historical considerations may ultimately be determining, there is a pressing need for consideration to be given to any constitutional framework that might be expected to contain and manage these complex and difficult factors in the event of a positive vote. Indeed, drawing upon the experience of the Brexit referendum there is perhaps a strong case for making clear in advance the range of alternatives, and the various challenges that each of these may present. Currently any thinking that has been done on this issue seems to be based mainly on an idea that Northern Ireland might simply be absorbed into the Irish constitutional structure, perhaps in a similar manner to the experience of the German Democratic Republic and the Federal Republic of Germany. There are, however, a number of factors that suggest such a model might have limited appeal, and that a more imaginative form of integration is required.

This contribution will look at the constitutional challenges of attempting to integrate what might be described as the “irreducible values” of the Irish Constitutional tradition and those of the Belfast Agreement. This will take the form of posing a number of questions which...
require immediate work from constitutionalists before any coherent question on the future of Ireland and Northern Ireland might be posed to the Irish electorates.

David Kenny  
Radical Constitutional Change as Constitutional Replacement: Bunreacht na hÉireann and the Ship of Theseus

This paper considers the prospect of using the Constitution of Ireland as the basis for a United Ireland Constitution. It is perhaps assumed by some political commentators in the South that this approach – similar to the German unification experience – is an obvious starting point. But it is far from clear that this is a workable model. It might have an advantage in giving us a default, a starting point and some sense of continuity that might make agreement on a constitutional arrangement less likely to break down. But at the same time, defaulting to the Irish Constitution’s positions could itself be so divisive as to cause such a breakdown in consensus.

If the Irish Constitution could fill this role, it would have to be overhauled in a major way, leaving a document that might look almost unrecognisable. The practicality of this should be carefully considered, but so too should the risk that unwritten or conventional aspects of the original constitutional order might remain in spite of radical change. This raises the philosophical quandary of the ship of Theseus: is a ship, with all its planks gradually replaced, still the same ship? The paper considers whether the protean nature of this radically amended constitution’s identity – simultaneously the same and vastly different – could offer a road to a successful compromise.

Oran Doyle  
Irish Constitutional Identity under Reunification

The Constitution of Ireland 1937 constructed national identity in two ways. At the rhetorical or dignified level, the Constitution presented a Gaelic all-Ireland people. At a practical or efficient level, the Constitution constructed a 26-county people as the locus of constitutional authority and the focus of constitutional concern. These two representations of the Irish people existed in uneasy tension with one another, the 26-county people exercising the right to speak on behalf of the all-Ireland people. The 1998 Northern Ireland settlement, and attendant alterations to Articles 2 and 3 of the Irish Constitution, reduced this tension by downplaying any account of the identity of an all-island Irish people. The prospect of a border poll has refocused attention on how Irish unity might be achieved. If reunification were to occur, some account of an all-island Irish people would necessarily re-emerge. In this paper, I explore what sorts of changes might be necessary to the dignified parts of the Irish Constitution to reflect the identity of such an all-island people. The purpose of the paper is not to argue for reunification, still less to argue that such reunification should occur through amendments to the 1937 Constitution. This thought experiment, however, identifies aspects of Irish constitutional identity with which any discussion of reunification must engage.

Panel B  
UK Constitutionalism after the Vote to Leave the EU

Chair  
Gavin Philipson

Tomasz Wieciech  
The Brexit Process and the Reserved Powers of the Crown

Amidst the quarrels over Brexit deal, speculations about backbenchers’ mutiny and the push for extension of Article 50, some Conservatives MPs suggested that the government could prevent such a move by a prorogation of parliament or by asking the Queen to withhold royal assent from backbenchers’ bills. Suggestions that Queen should be in any way involved in Brexit controversies were widely dismissed as inappropriate if not outright ludicrous and
appealing. Even the Queen’s cautious remarks in a speech given during her annual visit to the Women’s Institute on the Sandringham estate, when she urged people to “seek out the common ground” and to “never lose sight of the bigger picture” met with criticism. It has been argued that Queen should not have given any reason to doubt that she remained politically neutral.

For a student of the British constitution such an outright rejection of the Queen’s involvement in Brexit process seems somehow puzzling. The reserved powers of the Crown have been a subject of intense debate among constitutional lawyers and political scientists, not only in Britain, but elsewhere in the Commonwealth as well. What was suggested by Conservative MPs was exactly the use of the reserved powers. Was an idea to get the Sovereign involved in Brexit process in this way completely unacceptable? Would the Queen be constitutionally authorized to prorogue parliament or refuse royal assent if asked to do so by her government? Under what circumstances would it be appropriate for her to intervene? Are there any imaginable? What is the Queen’s constitutional responsibility in times of national emergency? Does her status as a hereditary monarch excludes any active role in parliamentary democracy, whatsoever? What does the Brexit process tell us about the current state of the reserved powers of the Crown? This paper seeks to address the above questions, while discussing Queen’s current role in the British constitution.

Chris McCorkindale and Aileen McHarg
Litigating Brexit

A striking feature of the Brexit process has been the amount of litigation it has generated, in both UK and foreign courts. Much of this litigation has been notably speculative, involving novel legal arguments and/or unusually ambitious or unprecedented attempts to invoke the jurisdiction of the courts. Some cases have been successful, and appear to have had major impacts on the decision-making process, the options available to decision-makers, and/or on the content of Brexit-related decisions. Others have been unsuccessful, having been dropped or rejected at an early stage. There may yet be more litigation to come.

In this paper, we attempt a preliminary survey and classification of Brexit-related litigation, identifying the nature of the issues which have been litigated, the identity of litigants and interveners, the funding of litigation, the outcomes of cases, and the reasons for those outcomes. Our major focus is, however, on the strategic aims and motivations for litigation, and upon the impact of cases, distinguishing between their formal or direct effects on the handling of the Brexit-process, and broader or more indirect impacts on the politics of Brexit, and arguing that these effects do not necessarily coincide.

We also consider what the cases tell us about the development of strategic public interest litigation in the UK, both in terms of the perceived attractiveness of the courts as an avenue for the pursuit of political goals, and in terms of the receptiveness of the courts to disputes which draw them into areas of major political controversy.

Robert Brett Taylor
Constitutional Conventions under the post-Brexit Constitution

The Brexit process has put a strain on key elements of the UK constitution. It has highlighted in particular the Constitution’s continued reliance on constitutional conventions (political rather than legal rules which are immune from judicial enforcement) and has raised questions over both their viability and desirability in the twenty-first century.
This was demonstrated early on during the Brexit process in the UK Supreme Court’s decision in Miller (2017), where the Court unanimously held that the Sewel convention was incapable of legal enforcement despite being put into statute in 2016. The Sewel convention also found itself in the spotlight following the decision when the consent of the devolved bodies was not sought for the passage of the enactment of the EU (Notification of Withdrawal) Act 2017, and again when the EU (Withdrawal) Act 2018 was enacted irrespective of Scottish Parliament’s refusal to give its consent when asked. Both instances could be seen as either breaches of Sewel convention, or merely evidence of its broad scope. The fact that the consent of the Northern Ireland Assembly was not required in either case because it was not sitting, further highlights a gap in the UK’s territorial constitution which even convention has lagged behind in filling.

Potential shortfalls in our current understanding of existing conventions have been further highlighted as a result of the Government’s attempts to have the Withdrawal Agreement approved by the House of Commons. Claims that Royal Assent could be refused, or Parliament prorogued on the advice of Ministers, presents a paradox whereby such action, although constituting an abuse of power, would potentially be neither illegal nor unconstitutional.

This paper will accordingly explore these issues in greater detail, making an assessment as to what role constitutional conventions should play under the post-Brexit constitution.

Robert Craig Constitutional Statutes
This paper suggests a new definition for constitutional statutes. It begins by considering the orthodox definition of statutes as set out by Dicey that Parliament may ‘make or unmake’ any statute. Dicey stated that there are no constitutional statutes and later statutes always repeal earlier ones.

The paper traces the development of the concept of constitutional statutes in the case law following the UK’s membership of the EU. The definition given in Thoburn is that constitutional statutes are a novel and “higher” type of statute that cannot be impliedly repealed. Laws LJ held that such statutes regulate the relationship between the individual and the state or affect rights in some material way. This definition will be considered and critiqued.

Later case law has endorse the concept of constitutional statutes (e.g. HS2). An incremental approach is being adopted by the courts – in the normal traditions of the common law. Recent literature including articles on what ‘constitutional statute’ means will be analysed.

The second part of the paper sets out and defends a new definition of constitutional statutes.

A constitutional statute is a statute where Parliament intends to confer, alter or remove the ability to pass or repeal primary legislation or amend, alter, suspend or dispense with future primary legislation.

The new definition is restricted to where Parliament is intentionally acting in a constitutional capacity in relation to the allocation of primary legislative powers in relation to other bodies or Parliament itself. The paper will integrate the definition with another part of Laws LJ’s test for constitutional statutes which is that they “cannot be impliedly repealed”. Acts that confer
the power to amend future Acts cannot be impliedly repealed although any such powers can be **expressly** changed subsequently.

It will be argued that the new definition is fundamentally consistent with Diceyan orthodoxy.

Panel C  **Northern Ireland and Brexit: Distinct by Design**
Chair  **John Morison**

Northern Ireland has been firmly cast as an obstacle to the smooth running of the Brexit project. Such a characterisation is unfair in two respects; first because the circumstances of the region are so multifaceted that describing them as only a singular problem seems to downplay things, and second because the problem (this time) is not of Northern Ireland’s making. Northern Ireland is different. Its history (and the connected tale of the Republic of Ireland) is complex and fresh in the memories of the people and politicians of the island. Its governance institutions reflect that overlapping and complex history, and their only-mostly functioning nature reflect the freshness of many arrangements.

Each paper of this panel is firmly rooted in this complex history, and shares a concern with understanding how overlapping agreements on nationhood, peace, economic prosperity and regular social life can survive Brexit. In the context of this shared starting point, the panellists (from the perspectives of trade law, EU law, public international law, UK public law, Irish public law, and human rights law) explore the multifaceted nature of the Northern Ireland ‘problem’.

The panel comprises papers on the movement of people outside of the EU structures, the interaction between trade systems and the complexities of a split society and an un-close-able border, the exposure of promises on rights to the realities of protecting rights extra-jurisdictionally, and the overlapping sovereignties which the draft Withdrawal Agreement could bring into being.

Aoife O’Donoghue  **The Common Travel Area: Real or ‘Related’ Arrangements?**

For much of the Article 50 period, the Common Travel Area (CTA) was touted as the solution to the issues posed by Brexit for the island of Ireland. The CTA – the argument ran – had existed for nearly one hundred years and had persevered through even the most challenging political, social and economic periods on the island. This was a largely a-historical view of the CTA that ignored the ebb and flow of the arrangement. It was also a view that grossly exaggerated the coverage of the CTA and what it did. This paper places the CTA in its proper historical and legal context, discussing the gaps between the expectations of it and what is legally enshrined. It also examines the more recent steps that have been taken to put the CTA on a more secure legal footing.

Sylvia de Mars  **Making it (Even) More Complex: Plucking Trade from its Nest**

After Brexit, Northern Ireland is very likely to – in an exaggeration of the broader UK position – be bound up within global, regional, national, and local governance mechanisms that address peace, trade, international relations, and rights. The result is that questions on Brexit, identity and governance need to be studied through the inter-relationships between politicolegal systems. One developing explanation for such governance trends has revolved around ‘nested scales’ (Delaney and Leitner, 1997, p. 93), but the complex negotiations over NI’s governance arrangements following Brexit demonstrate that this paradigm cannot
adequately explain the complexity of governance futures. This paper explores these tensions between scales and systems, through the specific issue of trade relations. It uses Northern Ireland as a case study for understanding how international and regional rules might be themselves shaped through contact with complex sub-national polities, and what adjustments might be expected within those national contexts, as well as what the limits of the ‘supranational’ adjusting to the ‘national’ or ‘local’ may look like.

Colin Murray                Futureland: Northern Ireland after Brexit
Brexit’s impact on the existing fissures in the UK’s “territorial” constitution, and in particular on the divide between Great Britain and Northern Ireland has produced much anguished concern over the ongoing “constitutional integrity” of the UK. This paper examines how the Belfast Agreement has shaped UK/EU withdrawal negotiations and the draft Withdrawal Agreement and exposed the degree to which multiple constitutional arrangements are at work within the UK. The Belfast Agreement places Northern Ireland in a state of deep alignment with Ireland across many areas of law, binding international commitments which cannot be wished away or satisfied by some narrow response focused on border technology. This paper also assesses why the implications of the Belfast Agreement came as such a surprise to many prominent actors within the Brexit debate, and whether the draft Withdrawal Agreement potentially alters the UK’s territorial constitution, transforming into a space of overlapping sovereignties.

Ben Warwick                Disappearing Rights under the Draft EU-UK Withdrawal Agreement
The draft EU-UK Withdrawal Agreement did not suddenly emerge in November 2018. It was a process involving multiple iterations, some of them public, including the Joint Report of December 2017, the EU’s Commission’s draft text of March 2018, and the UK’s negotiating position of June 2018. From the outset of this process, securing the Good Friday/Belfast Agreement and an open border in Ireland were accepted by all negotiating parties as a priority for the first phase of Brexit negotiations. What rapidly became evident, however, was that there was no shared understanding of what those goals required. This paper examines how the potential scope of EU rights protections operating in Northern Ireland narrowed during the negotiations towards the draft Withdrawal Agreement and reflects upon whether this narrowing is largely explained by the UK’s robust negotiating position, or if the EU institutions became concerned with the implications of the potential reach of the special status on offer for Northern Ireland.

Panel D                    Continuing UK Relevance of EU law
Chair                      Paul James Cardwell

Paul Daly                  European Irritants in UK Public Law
I will argue that three concepts from European Union law will have important and lasting consequences for the future of UK public law: the principle of proportionality; the principle of effective remedies; and the principle of supremacy.

First, the principle of proportionality, although not unique to EU law (and, on some views, having indigenous roots), has had a marked effect on the development of UK public law in recent decades. Proportionality has now come to be accepted as a ground of review in its own right, in respect of certain claims, and it has been argued that it should become the general
ground of judicial review of administrative action. Its prominence in EU law has, all things considered, likely contributed to its widespread acceptance as a feature of UK law.

Second, the principle of effective remedies (found, for instance, in the Aarhus Convention and the Procedures Directive) is likely to continue the erosion of the distinction between appeal and review in administrative law. Recent judicial recognition of the fact that review can approximate to an appeal in some circumstances can be seen as reflecting the insistence of the Court of Justice on effective remedies against defective administrative decisions.

Third is the principle of supremacy. Membership of the EU carries with it an obligation to respect the supremacy of EU law, which includes an obligation to interpret domestic law in a manner compatible with EU norms and an obligation to disapply inconsistent domestic law. The acceptance by the UK courts of the disapplication obligation marked a significant development in UK public law, which was soon followed by judicial questioning of orthodox notions of parliamentary sovereignty. Given the UK’s commitment to legislate in the EU (Withdrawal Agreement) Bill for the permanent entrenchment of the rights of EU nationals, the principle of supremacy is likely to become a permanent feature of UK public law. Such legislation will, moreover, almost certainly trigger demands for comparable entrenchment from human rights lawyers and advocates of robust devolution arrangements. These debates seem inevitable and could well result in significant modifications to contemporary understandings of parliamentary sovereignty.

Jade Kouletakis  
No Man is an Island: A Critical Analysis of the UK’s Implementation of the Marrakesh Treaty

On the 26th of November 2018, the EU Commission initiated proceedings for infringement of the Treaty on the Functioning of the European Union against 17 (out of 28) Member States for non-compliance with the EU’s Marrakesh Directive (2017/1564), with the UK being among them. This Directive and corresponding Regulation aims to implement the Marrakesh VIP Treaty and came into force on 12 October 2018, which was the deadline provided to member states in implementing the Directive. On the 11th of September 2018, the United Kingdom made the Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018. The UK Regulations came into force the day before the EU deadline, and the lack of in-depth critical debate around this piece of legislation as well as the EU’s announcement of instigating legal proceedings underscores the necessity of this paper. This paper seeks to assess the UK’s Marrakesh Regulations in light of both the EU legislation as well as similar implementing legislation adopted by what has been expressly identified by the UK as key post-Brexit trading partners, namely the United States and South Africa. This paper will ask: In light of the Marrakesh Treaty, can it be said that the United Kingdom is displaying the same level of commitment to implementing its international obligations as those with whom they wish to continue trading post-Brexit? In considering these issues, it will be argued that – in its current form – the UK’s Regulations violate the EU Directive, potentially violate international human rights instruments, and fails to implement the spirit and purport of the Marrakesh Treaty to the same degree as the other jurisdictions mentioned. If the UK’s Marrakesh Regulations are an indicator of things to come, then the lack of buy-in to the Marrakesh Treaty by what ought to amount to one of its key supporters indicates that the much-touted concept of an ‘outward-looking Britain’ is unfortunately set to be replaced with the longstanding stereotype of a ‘small island’.
Martin Brenncke  
Statutory Interpretation and the Role of the Courts after Brexit

My paper evaluates the impact of the European Union (Withdrawal) Act 2018 on statutory interpretation and on the role of the courts. The Act’s new interpretative obligations create a myriad of issues that will occupy litigants and courts in the future. I explain how the complexities of the Act should be disentangled and how courts should exercise their policy choices under the terms of the Act. My main argument is that the general purpose of the EUWA - legal continuity - has a much further reach than is visible on the surface of the Act. I show that the assumption that Brexit is a clear break from EU law is in several respects contradicted by the detail of the legislative scheme. The EUWA’s strong theme of legal continuity has the consequence that domestic law will remain deeply intertwined and aligned with EU law after exit day. This generates a number of surprising results. For example, it is argued that EU legal culture and the CJEU’s teleological method of statutory interpretation is retained one-to-one. Furthermore, the Charter of Fundamental Rights of the European Union will remain highly significant for the interpretation of retained fundamental rights after exit day. I also demonstrate that the 2018 Act adjusts the relationship between the courts and Parliament in a way that is not foreseen. European interpretative obligations and methods have shaped this relationship and Brexit does not mean that it is profoundly restructured. I demonstrate that the EUWA strengthens rather than weakens the following current trends in UK constitutional law. The Act (a) extends judicial powers to re-interpret and alter the meaning of legislation, (b) intensifies instead of reverses the shifting of power from the legislature to the judiciary and (c) increases the courts’ institutional position as policy innovators.

Pedro Ponte e Sousa  
Britain, Brexit, and Portuguese foreign policy: opportunity or challenge?

Portuguese foreign policy (FP) has relied for centuries on the alliance with Britain, known as “the oldest alliance in the world”. Portugal has always faced a geopolitical dilemma for its international insertion: choosing between Europe and becoming a continental nation, or preferring the Atlantic and fitting as a maritime one. Additionally, the country has allied with the superpower throughout its history, mainly the maritime one (Britain, and most recently the US), being usually quite comfortable with the international system set-up by Britain/US. The strategies Portugal employed throughout the centuries to increase its power, whether by the maritime and imperial enterprise, or creating alliances with powers outside the Peninsula, both relied heavily on the strong support of Britain.

Most recently, a number of both internal and international issues led to some detachment between the two countries: favouring the alliance with the US; the loss of the empire(s); the fascist nature of the ruling regime in Portugal, until 1974; EU membership. Nevertheless, Portugal never stopped, implicitly or explicitly, to follow Britain on most FP decisions and stances (quite visibly on a share understanding of the European integration process and dynamics: the rejection of a French-German axis, favouring unanimity versus majority vote, rejecting deeper integration on FP issues, preferring an intergovernmental structure with veto power, ...).

In this paper, we analyse the challenges Portuguese FP is facing on three different levels: firstly, in the bilateral relations with the UK (where trade and migration are prevalent concerns over Brexit); secondly, regarding Portugal in the world, focusing on the EU integration process and NATO; and thirdly, aiming to explore any possible opportunities available to Portugal, as
to strengthen its role in the international arena. We will also explore any statements or opinions issued by both scholars or diplomats. We are particularly interested in linking both a generic/theoretical approach with more specific and tangible strategies decision-makers and official representatives of the Portuguese state can engage with. Our claim is that Portugal’s skilled diplomacy (which was always able to find allies and means abroad to assist in delivering its strategies and goals, both internally and externally) is able to face the challenges up ahead, and if Portuguese decision-makers take good advantage of the opportunities that may present, the country’s foreign stance can even be strengthened by Brexit.

Panel E: Relations between Parliament and Government
Chair: Joanne Hunt
Gavin Phillipson: Brexit, Crisis and the Constitution: How the Referendum Mandate has Disrupted the Constitutional Relationship between Parliament and Government

This paper argues that the central effect of the 2016 EU referendum has been, not on sovereignty but on the relationship between parliament and government. It is a central principle of the UK constitution that a government may continue in office only for as long as it enjoys the confidence of the Commons (hereafter, ‘the confidence rule’), a rule said to lie ‘at the core’ or ‘foundation’ of the UK constitution (Tomkins, 2005). This paper argues that Brexit – and particularly the role of Parliament in approving – or otherwise – the Withdrawal Agreement – have placed this doctrine under significant strain. Specifically, it has produced a division between what this paper terms a ‘narrow’ and a ‘broader’ view of the confidence doctrine, at least as it applies to the Brexit process. Under the narrow view, the only way in which the Government can be compelled to do the Commons’ bidding is through legislation; absent this, the Government is free to ignore the will of the Commons (as expressed e.g. in parliamentary resolutions) unless and until it is ejected from power via a formal motion of no confidence. The Government has sought to justify this view by arguing that, in relation to Brexit, its mandate comes, not from the will of the Commons, but directly from the people.

This has been supplemented by arguments that attempts by the Commons to impose its will on the Government by suspending SO 14 so as to take temporary control of the parliamentary timetable would be ‘unconstitutional’ and would justify unprecedented Executive retaliation in the form of the revival of the ‘zombie prerogatives’ of prorogation of Parliament and/or refusal of Royal Assent in the event that legislation is passed against Government wishes.

This paper argues against the above trends and in favour of a broader view of the confidence rule by which, not only the continuing survival, but the key policies of the government depend upon their commanding the confidence of the Commons. It also strongly contests attempts to justify what it characterises as moves towards Executive supremacism, their purported legitimisation via the referendum mandate, and the notion that changes to SO 14 can properly be described as ‘unconstitutional’.

Adam Tucker: The Delegated Legislation Problem and Brexit

In this paper, I argue that one legacy of the Brexit process will be the exacerbation of a pre-existing constitutional problem, namely the troubling constitutional position of delegated legislation, and I tentatively suggest some reasons to hope that the tide might still be turned.

The pre-Brexit constitution already had a problem with delegated legislation: government ministers were empowered to legislate too much, and their exercise of that legislative power
was inadequately scrutinised. So even before the referendum, there was already a case for constitutional reform tackling these problems i.e. a reconsideration of the extent to which Parliament routinely delegates legislative power to the executive alongside a reinvigoration of parliamentary scrutiny (especially of the merits) of statutory instruments.

Yet it seems likely that the process of withdrawing from the EU will have precisely the opposite effect. The pressures of adapting domestic law have already resulted in an increase in delegations of legislative power, including a new cluster of significant powers to amend primary legislation (so-called Henry VIII clauses). Whilst this has been accompanied by the creation of some additional scrutiny methods, these modest changes are not sufficient to result in an increase in meaningful scrutiny of delegated legislation. So as it stands, Brexit has been bad for the constitution (in this sense) and this impact is likely to be persistent. There will probably be more inadequately scrutinised delegated legislation after Brexit than there was before.

Still, the heightened attention on the uses and the scrutiny of delegated legislation – which is unlikely to last long - might also be a moment of opportunity. Reflection now on the uses of delegated legislation, and on better ways for Parliament to scrutinise it, can have a positive impact on the constitution, not just as we navigate Brexit, but beyond.

Jörg Fedtke and Dorothea von Gablenz

Meaningful Votes beyond Brexit? – Parliamentary Authority v Parliamentary Duty

This paper explores a German concept that has striking parallels in R (Miller) v Secretary of State for Exiting the European Union and may help navigate some of the uncharted constitutional waters that the United Kingdom seems to be heading for post-Brexit.

Much has been written in the past year about the right of Parliament – or, more precisely, the House of Commons – to be involved in, and perhaps determine the outcome of, Brexit. The meaningful vote, introduced by the European Union (Withdrawal) Act 2018, has developed into a prominent feature of a rapidly changing legal and political landscape, and may well reappear in different future guises regardless of the final outcome of this particular constitutional adventure. At its heart, the meaningful vote is a quest to reclaim from an increasingly powerful executive, by statute, some measure of legislative influence – a quest that, strictly speaking, should not be necessary if parliamentary sovereignty still existed as a key principle of day-to-day governance in the UK. Understood in this way, sec. 13 of the European Union (Withdrawal) Act 2018 reflects fears of a Commons dominated by the executive branch of government even when it comes to issues that are critical for the constitutional future of the country. Lord Stein invoked similar fears forcefully in R (Jackson) v Attorney General more than a decade ago.

This presents German observers with a paradox.

The German legislator – rather than having to fight for a right to be involved – is under a constitutional duty to decide questions of fundamental importance to society and may not leave these to executive fiat (even if a majority might so prefer). This duty of a legislator who does not rule supreme – developed by the German Federal Constitutional Court decades ago (Wesentlichkeitsrechtsprechung) – bolsters the position of parliament as a key institution
within the constraints of a supreme constitutional text that sets out the fundamentals of the German legal order (e.g. human rights, democracy and the rule of law). The approach can potentially bridge the gap between two seemingly irreconcilable concepts (a supreme constitution versus a supreme legislature), maintains a balance of power between the executive and legislative branches of government, and safeguards democratic principles of governance. The legislator, when confronted with core societal issues, must strive to resolve questions of fundamental importance (issues that are wesentlich) in the limelight of public scrutiny and according to due parliamentary process, and bestow democratic legitimacy on difficult choices that may not be ignored or delegated entirely to the executive.

The authors of this proposal intend to analyze if and how this approach can contribute to the future understanding and development of meaningful votes in other areas of UK law.

Conor Casey  
**The Gate-Keepers: Lawyers and Executive Power**

The United Kingdom’s decision to exit the European Union caused serious ripples across its constitutional order, including repeat clashes between Parliament and Government. This friction reached a crescendo with Parliament’s unprecedented decision to hold the Government in contempt for refusing to publish Attorney General’s legal advice to Cabinet on its draft Withdrawal Agreement with the EU. One of the many interesting constitutional issues this event put in stark focus was the important relationship between Executive Power and legal advice provided by its lawyers. This is not relationship unique to the UK. Across many divergent constitutional orders and traditions, the executive branch binds itself to constitutional or legal advice tendered by its legal advisors despite there being no rule of law requiring it to do so.

In this paper I explore some implications of this phenomenon. I argue that legal advisors are the effective gate-keepers of executive action; and an important variable to consider when assessing the power of the modern executive. Using the UK and Ireland as case-studies, this paper considers how executive branch lawyers play a Janus-faced role in respect of executive power; capable of acting as a powerful source of constraint and empowerment. On the one hand, executive advice has been presented as an internal constraint on the executive in the pursuit of its policy preferences. Conversely, executive legal advice has also been closely linked to the empowerment of the executive branch, providing legalistic credibility to executive action which might shore up a policy’s political credibility as well. I suggest that, on balance, they tend more toward empowerment. I argue this is because executive lawyers are not an exogenous constraint, but one which can be structured in a manner most suitable to the executive, making them a useful tool of executive governance, and an important factor to consider when assessing questions of executive predominance.

Panel F  
**Leaving the UK behind - Integration in the EU with and without the State**

Chair  
Iyiola Solanke

Just as the EU is the first non-state to accede to the ECHR, has the time now come for the EU to consider how non-states can become members? The papers in this panel look forward to the post-Brexit landscape in the UK. Focusing on aspects of free movement, they each imagine how citizenship, trade and establishment may be organised after March 29, 2019. Drawing upon existing models in the European and international legal space, they propose new ways to think about relationships between natural and legal persons, as well as between
natural/legal persons and the state. The ultimate goal is to identify methods of EU integration both with and without the state, enabling citizens and companies to continue to ‘belong’ to the EU even if the UK will no longer be a member state.

Magali Eben  
Revisiting (EU) Citizenship in the Wake of Brexit

Throughout European history, citizenship has indicated individuals’ belonging to a particular community, which endowed them with rights, protection and duties. Although citizenship does not need to be associated with a nation (after all, in Ancient Greece citizenship indicated you belonged to a polis, such as Athens or Sparta, rather than the land of Hellas), citizenship has traditionally been linked to nation-states. The creation of EU citizenship seemed, therefore, a watershed: individuals would be citizens of a supranational community, endowed with supranational rights. Supranational citizenship was born.

And yet, it is difficult to say that EU ‘citizenship’ is truly supranational. Article 20TFEU means individuals are EU citizens insofar as they are nationals of a Member State. EU citizenship is, in fact, distinctly national. This understanding jars with the original purpose of citizenship: instead of indicating that an individual belongs to the community, it declares that a particular State is a member. It is the State which endows its nationals with rights, and it is the State which can take them away.

Brexit has brought this reality in sharp focus. It has revealed how fragile EU citizenship truly is. The choice of a nation to revoke its membership means that 66 million individuals lose theirs – regardless of how they voted. The calls for ‘associate citizenship’ after the referendum – and the failure to be taken seriously – reveal the depth of this issue; that citizenship is not a fundamental status protecting individuals. That the EU is not a community of people(s). This talk revisits the notion of citizenship, and the flaws in its EU interpretation. It argues that, since Brexit has revealed the fault-lines of EU citizenship, it could also become the catalyst to revisit it in an unprecedented way. Associate citizenship for nationals of former Member States is not a panacea. To truly honour the meaning of citizenship, we may have to let go of the nation-state.

Oriana Casasola  
Judicial co-operation for cross border insolvency cases after Brexit

Civil Judicial Cooperation has been a cornerstone of European Union (EU) law as it is instrumental to the enjoyments of the economic freedoms on which the EU has been founded. A high degree of integration on private international law rules has been reached concerning judicial cooperation in family law, civil and commercial matters and insolvency law. In particular, the European Regulation on Insolvency Proceedings seeks to coordinate insolvency proceedings with cross-border elements to deal with businesses in financial distress across the EU member states. In parallel, the Regulations on civil and commercial matters are of relevance for particular restructuring proceedings such as the scheme of arrangement.

At the national level, the UK is worldwide renowned for its insolvency system due to the efficiency of its procedures. Indeed, in the past decades, the UK had been an attractive insolvency forum for both European and extra-European businesses. This has been facilitated by a series of factors such as the flexibility of the system itself, its creditor friendliness, and the framework provided by the European Insolvency Regulation. Nevertheless, even though the English insolvency system is advanced and competitive, the global dimension of businesses requires tools to coordinate potential issues emerging in multinational insolvencies.
This paper seeks to evaluate the impact of Brexit on British cross-border insolvency and restructuring cases and its implication for various national and international stakeholders, such as shareholders, creditors and lenders. It seems likely that – with or without a deal - the exiting from the EU will leave significant gaps in the regulation of the subject. Consequently, the paper seeks to assess the availability of extra-European Union instruments of cooperation on the subject, such as the UNICITRAL model law and the Lugano on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Joshua Warburton  
**State and Individual Benefits in a New Era of Regulatory Autonomy: Normalising Optional Instruments**  
This talk assesses the viability and opportunity for optional legal systems for use by persons outside, and within, the single market. The analysis is complemented by an assessment of issues relating to competency of those choosing a ‘secondary’ legal system. The aim of the discussion is to establish a conceptual framework for optional legal systems that will allow consumers and small traders to utilise the array of harmonised legislation established within the EU to establish easy, comprehensible and effective trade rules. By utilising this conceptual framework, it should be possible to create optional instruments in any number of defined fields.

The functionality of the optional instruments derives from previous legal systems with optional components, such as the formerly proposed Common European Sales Law (CESL), the European Economic Interest Grouping (EEIG) and the Societas Europaea (SE). The optional instruments would function as a secondary legal system within a state’s own legal system and would be identical within all other states who have chosen to utilise the optional legal system. The choice to utilise the optional instrument would be down to the traders and consumers themselves (each having to agree to it). In permitting this system, it would alleviate issues relating to the disparity of laws between the UK and the single market and would decrease legal discovery costs for traders and consumers alike.

**Panel G**  
**Brexit and Place**  
Chair  
Chris McCrudden

**Jo Hunt**  
**Subsidiarity and the Territorial Constitution**  
EU membership has provided a backdrop to the processes of devolution that the UK embarked on two decades ago. The EU’s legal rules, norms and principles of governance have been part of the constitutional meta-structure in which devolution has played out. Pre-dating the UK’s 1998 devolution settlements, the principle of subsidiarity is an important part of the governance architecture of the European Union, and one, this paper will argue, that has been influential in the operation of the UKs territorial constitution. Subsidiarity as an EU principle has had an impact for policy input, opening up the decision-making structures to regional interests. It has also had an impact on policy output, and the imprint of subsidiarity concerns can be seen in EU legislation, which has led to a carve out of space for the exercise of devolved competence and local autonomy. Whilst a principle of constitutional significance, the CJEU has not to date definitively categorized subsidiarity as a general principle of EU law, and so under the approach taken by the European Union (Withdrawal) Act 2018, this principle will not be retained in UK law. The paper will examine the other sources for the existence of the
principle as a matter of UK law, and consider whether there is anything that can provide a comparable constitutional anchoring of the principle of subsidiarity in the UK order. Reflecting on the constitutional challenges ahead after withdrawal from the EU, and particularly the implications for devolution, the paper will make the case for adopting the principle of subsidiarity in the UK constitutional structure after EU withdrawal.

Nikos Skoutaris  Brexit as a Secession
UK’s withdrawal from the EU will mark the first time that a Member State of the European Union decides to put an abrupt end to the federalist ‘sonderweg’ of ‘an ever closer union’. Although the EU is not a State, Brexit and especially the Article 50 TEU procedure resemble the secessionist processes around the globe. Brexit might also become a catalyst for the secession of the two UK constituent nations that voted to remain: Scotland and Northern Ireland. Finally, and with regard to the Northern Ireland the ‘backstop option’ provided by the Protocol of Ireland/Northern Ireland of the UK Withdrawal Agreement has been portrayed as a threat to the UK constitutional and territorial integrity and as an EU attempt to ‘annex’ that region.

The present paper aims at understanding the interrelationship between Brexit and secession by setting this process into its broader comparative context. First, it compares Art 50 TEU with other constitutional provisions that allow for secession. Second, it explains how Brexit could trigger the dissolution of the United Kingdom of Great Britain and Northern Ireland and the reintegration of Scotland and Northern Ireland to the EU by focusing and comparing the relevant devolution acts and the EU legislative framework. Third, it discusses why a solution to the ‘Irish border’ conundrum that would entail a much closer relationship of this region with the EU than the rest of the UK does not threaten the UK constitutional integrity. This becomes clearer if the ‘backstop’ is set in the broader context of territorial differentiation within the EU constitutional order of States. In that sense, it should be seen as a pragmatic solution that protects the fragile balance struck by the Good Friday Agreement.

By setting Brexit into its broader comparative context the paper manages to shed light to the secessionist dimension of the UK’s withdrawal from the EU and as such offer a new angle to this process that will reshape the UK constitutional order for the years to come.

Tim Oliver  London Calling Brexit: Britain’s Global City in a Brexit Britain?
London is not only the UK and England’s capital city. It is Europe’s global city, with an economy, population and outlook that mixes England, Britain, Europe and the world in such a way that it is often compared not with other European cities but with the likes of New York, Hong Kong, Singapore or Dubai. Its size - the largest city in Europe, with a population larger than 14 EU member states, and an economy that produces about a quarter of the UK’s economy from 13% of its population - means what happens to London matters for the UK and Europe. Despite this, discussion of London and Brexit has been limited. Often, London is referred to as a shorthand for UK government or the financial institutions of ‘the City’. A focus on Scotland or Northern Ireland and English nationalism (particularly in Leave voting areas of England) has also overshadowed analysis of the metropolis. This paper is based on ongoing research into the place and role of London in Brexit, primarily with regard to the Brexit negotiations. It will touch on four issues. First, to what extent London is a distinct political space within the UK and whether this has been overlooked by UK political science. Second, the role of the topic of London (or a metropolitan bubble) in Brexit, not least in terms of explaining the Leave vote.
Third, how Londoners view Brexit and how these views have shaped UK politics, especially in the 2017 General Election. Finally, how London’s main city-wide political institutions – the mayor, GLA and boroughs – responded to the vote to leave the EU and whether they have been able to shape Brexit or been passive participants in it. The paper will conclude with some comments on where Brexit leaves London in the UK’s political and constitutional order.

Nicola McEwen From one shared sovereignty to another? Territorial governance in the UK after Brexit

The demand to take back sovereign control over UK decision-making, and to be freed from the regulatory and judicial oversight of the EU, has been central to the UK Government’s approach to Brexit. Yet, implementing Brexit raises profound challenges for the locus of sovereignty and power within the UK (Dougan, 2017). This paper will explore the domestic process of Brexit, and in particular its effects on the UK’s territorial constitutional and power relationships between the devolved nations and the UK government. In contrast to the strongly intergovernmental nature of EU policy-making, characterised by formal mechanisms, regulation and law (Damro, 2006; Radaelli, 2013; Mathieu, 2016), territorial governance across the UK has been marked by relatively dualist models of power allocation (McEwen and Petersohn, 2015). The system of intergovernmental relations is weakly institutionalised, with little policy coordination and little co-decision between the UK and devolved governments. The Brexit process has kickstarted an intergovernmental review exploring alternative models of coordination and co-decision, including negotiating common regulatory frameworks and regulatory oversight of the UK internal market. Yet, the dynamics of competitive territorial politics suggest that consensus may prove elusive. The alternative pathway is to match the regaining of sovereignty from the EU with reinforcing sovereignty and decision-making power within the UK, constraining the capacity for policy autonomy and regulatory divergence on the part of the devolved governments. This paper will examine intergovernmental, political and legislative developments during the course of negotiating and preparing for Brexit to examine whether the UK is moving towards a shared sovereignty model, with increased intergovernmental coordination and co-decision, or conversely, whether the desire to regain sovereignty, aligned with concerns about regulatory divergence within the UK, are reinforcing power and authority within the central institutions of power.

Panel H People and Rights
Chair Aoife O’Donoghue
Claudio Martinelli The Role of the Referendum in the Westminster System

The whole Brexit issue revolves around the referendum held on June 23, 2016. For the first time a UK-wide referendum had a result that brought a change to the status quo. This makes this referendum different from all the previous ones and opens a long series of questions about the constitutional role of referendums in the British Constitution and, more generally, about the constitutional role of direct democracy and the electoral body in the Westminster Model.

Regarding point 1 (Brexit and the UK constitution) indicated by the Call, my paper seeks first of all to analyse the most important issues opened by the use of referendum in the Brexit affair. Secondly, to outline the relationship between the political direction of the Government and legal solutions adopted in the law establishing of 2015, and finally I would like to focus on the legal nature of that popular pronouncement, with particular attention to the reading that gave the UKSC in the Miller Case Judgment.
From all this analysis I would like to suggest useful indications to answer some questions that are proposed today to the attention of scholars: is the referendum appeal always compatible with the inspiring principles of the British Constitution and the Westminster Model? The famous considerations expressed by Dicey in 1890 are still valid or are outdated when compared to the practice of the last decades? Is the legal nature of popular deliberation always the same or does it change according to the law that established it? To what extent the effects of the popular decision commit, constitutionally and politically, the institutions of representative democracy? Is it possible to trace some parallels with referendum experiences of some European countries?

These are all crucial questions for the future of the British Constitution.

Eoin Daly Popular Sovereignty after Brexit
The Brexit referendum and its aftermath appear to highlight a constitutional anomaly concerning the role of the people. While its verdict is acknowledged as unassailable and unaccountable – and while unaccountability is a hallmark of sovereignty – the people remains legally unrecognised as a constitutional agent. In turn, some commentators have argued that the discrepancy between “political” and “legal” understandings of popular sovereignty – or the failure to properly institutionalise popular sovereignty in constitutional form – represents a distinct site of constitutional crisis in its own right. However, I argue that such claims of constitutional anomaly, or of British exceptionalism in this regard, are mistaken. While the Brexit scenario seems to express the destabilising and disruptive potential of a popular sovereign that exceeds or evades constitutional recognition, this is in no sense a peculiarity of the British constitutional order. By its nature, the principle of popular sovereignty retains an inexhaustible or residual form that retains such disruptive potential regardless of whatever constitutional form or recognition it is assigned. Thus, critics of the British constitutional status quo overestimate the capacity of constitutional law in general to regulate or “domesticate” the popular sovereign.

James Rooney The Rights Implications of Irish Reunification
The decision of the majority of British – but not Northern Irish – voters to leave the EU has appreciably raised the seriousness with which the possibility of Irish reunification is discussed. It is commonly assumed that in the reunification scenario, Northern Ireland will be absorbed into the existing Irish constitutional order, with powers likely devolved to a regional assembly. My paper considers the impact which this incorporation of the population and territory of Northern Ireland will have on Ireland’s rights jurisprudence.

The development of rights protection in Ireland has occurred against a backdrop of relative social homogeneity. Since partition, the population of the Irish jurisdiction (and Irish judiciary) has overwhelmingly been nationally Irish and religiously Catholic. This has inflected the development of rights protection in Ireland in two main ways: first, by influencing the reasoning of the Irish judiciary, most noticeable in the Court’s development of natural rights in the late 20th Century; and second, by impacting the demography of claimants before the court. Whereas in comparable common law jurisdictions, constitutional rights have been conceptualised as principally counter-majoritarian protections for ‘discrete and insular minorities’, the relative absence of minority populations of sufficient size has prevented a similar understanding of rights from developing in Ireland.
Reunification entails the incorporation into the Irish constitutional order of a large minority identifying as neither Irish nor Catholic. If not changing overnight the composition of the judiciary, this will change the composition of rights claimants before the courts. As well as exploring what discrete constitutional rights issues this group may face – for instance relating to freedom of religion, assembly, and non-discrimination – my paper considers the potential for adjudication of rights cases on behalf of this minority group to considerably advance the Court’s understanding of the representation-reinforcing function of judicial rights-protection.

Brian Christopher Jones  

If We Can’t Have it All: Mistaking Europe, but Saving the HRA

Did one of the UK’s European partnerships have to go? It certainly seemed that way in 2015, but then it was the Council of Europe and the HRA under fire. Public attention then quickly turned to the impending EU referendum and Brexit, which has consumed the national psyche ever since.

Alas, if we can’t have it all and one of these partnerships eventually had to go, the referendum may have been a fortuitous constitutional blunder. Any plans to scrap the HRA 1998 have now been put on hold, and in reality, the statute has been saved: the Tories have no political capital to instigate any other major constitutional changes.

Whether voters cared which “Europe” had to go is a more difficult question to answer. In a recent public speech Lord Wilson said there was “no doubt” many voters in the referendum “believed that they were voting for the UK to leave the European Convention and to rid itself of the jurisdiction of the court in Strasbourg”, rather than voting to leave the EU. This paper will investigate Lord Wilson’s claim, demonstrating that some confusion over Europe should have been expected, whilst some was circumstantial, and some deliberate.

Without taking a wider view on the merits or demerits of EU membership, I argue that the Council of Europe and the ECHR have a strong British footprint, and therefore make the ECHR framework and the mechanics of the HRA a more natural part of the UK constitution. This provides strong rights protection whilst also upholding long-standing constitutional principles. Ultimately, the HRA structure permits constitutional creativity, allowing for a non-traditional protection of rights that involves input not just from all three branches, but from citizens, NGOs and others. This type of protection champions the importance of public discussion and debate, putting more emphasis on front-end constitutional actors to take rights protection seriously.
Development of the Chapter

The British-Irish Chapter of ICON-S was founded in 2016. More details of its organisation and structure can be found here:

https://icon-sbi.org

The Chapter is committed to hold a large open-call conference every year. One such conference was held in Trinity College Dublin in September 2017. This conference in Strathclyde is the second in the series.

The Chapter has no budget but is keen to facilitate and support events that enhance public law scholarship in Britain and Ireland. Through building a community of public law scholars in Britain and Ireland and through its position within the global ICON-S, the Chapter can help to raise the profile of other events that fall within its broad mission. There is therefore scope for a mutually beneficial relationship between the Chapter and the organisers of other events.

In this vein, the Chapter is helping to formalise and provide ongoing coordination for what has become a more-or-less biannual series of conferences on Irish constitutional law. Previous conferences were organised by Trinity (2007), UCD (2012), DCU (2014), UL (2017). The next conference is being organised by UCC for August 2019, in association with the Chapter. The Chapter will then have the responsibility of ensuring that another institution takes up the mantle for 2021.

The Chapter also lent its name to a closed symposium on constitutional silence, co-sponsored by Boston College and Trinity College Dublin and held in Dublin in 2016. The papers from this symposium have subsequently been published, post peer-review, in the International Journal of Constitutional Law.

ICON-S is currently exploring what more it can do as an institution to support early career scholars: http://www.iconblog.com/2019/01/announcement-icon-s-committee-on-junior-scholars/. This should also be a focus for the Chapter.

In light of all this, we plan to use the session on development of the Chapter to explore the following questions:

- How can the Chapter best support public law events in Britain and Ireland?
- How can the Chapter enhance networks between public law scholars in Britain and Ireland?
- How can the Chapter support early career researchers?
- What else should the Chapter do to develop?

Oran Doyle
Aileen McHarg
Call for Papers

The Irish Constitution has always had a unique reverence for popular sovereignty, as evidenced by the fact that it requires that every single proposed amendment of the Constitution be approved by the people in a popular referendum. This feature of Irish constitutionalism has many corollaries:

- it gives the Irish people a practical ownership over their constitution;
- it puts a great deal of pressure on the referendum process;
- it emphasises popular democracy, perhaps occasionally at the expense of a sharper focus on representative democracy and the role of parliament;
- it adds an extra dimension to citizenship;
- it impacts on Ireland’s engagement in international relations, due to the necessity to authorise the ratification of certain treaties by way of referendum; and
- it calls upon the courts to supervise the referendum process and give effect to the intention of the electorate.

The amendment process has been invoked relatively frequently. 40 proposed amendments have been put to referendum since 1937, of which 28 were approved. This frequency has noticeably increased, with 12 referendums in the last 10 years (compared with just 8 in the first 40 years of the Constitution’s existence). A substantial proportion of the Constitution has been amended, with some provisions amended repeatedly or even radically. As a result, the Constitution is perhaps less a foundational covenant which endures through time than a conditional contract that can be and is revised and re-negotiated at regular intervals.

All of this means that popular sovereignty is built into the Irish constitutional experience in a way that is very rare from a comparative perspective. This popular involvement in constitutional change is comparatively unusual and may have helped to protect the Irish constitutional order from populist critiques of elite politics. Its unique advantages and pitfalls are worth considering and showcasing through this conference and proposed edited collection.

The conference organisers invite you to submit a paper or panel that relates to one of the themes below and considers the Irish Constitution in its broadest sense, whether from doctrinal, theoretical, comparative, European, international or interdisciplinary perspectives:
**Foundational constitutionalism**, including: the constitution as foundational agreement; benefits and risks of frequent amendment; comparative perspectives on such benefits and risks.

**The referendum process**, including: regulation of campaigns (funding, broadcasting, etc); the Referendum Commission; illegality during campaigns; judicial review of referenda results; case studies on specific referenda.

**Popular sovereignty**, including: theory of popular sovereignty; primacy of popular sovereignty in Irish constitutionalism; comparative perspectives on the Irish amendment process; link between popular sovereignty and state sovereignty through the referenda on international/EU treaties.

**Parliamentary democracy**, including: the principle of representation; government control of parliament; the ‘principles and policies’ test.

**History of popular sovereignty**, including: centenary of 1919 Declaration of Independence; popular sovereignty in 1922 and 1937 Constitutions; state sovereignty as popular sovereignty in 1922 and 1937 Constitutions.

**Constitutional dialogue**, including: judicial populism; judicial deference to parliament; parliamentary silence; parliamentary engagement with the Constitution; active citizenship and hard cases; the ‘private Attorney General’.

**Constitutional reform**, including: the work of the Constitutional Convention and Citizens’ Assembly; the work of Oireachtas Committees; visions for future constitutional reform.

**Populism**, including: the challenge of populism for the Irish constitutional order; the extent to which the constitutional order does or should facilitate popular participation in governance.

Abstracts of 300 words (max.) should be submitted by 26 April 2019 to iconsgbie@gmail.com. Participation decisions will be made by mid-late May.

Selected papers will be invited for publication in an edited collection (subject to peer review). We are close to securing a publishing arrangement and details will be confirmed in due course. Participants wishing to be considered for inclusion in this collection should submit a draft version of their paper by 23 August 2019. Once the selection has been made, the deadline for submission of final drafts will be 1 November 2019. Where this deadline is not met, the slot in the collection will be offered to a reserve paper.
Registration and Coming to Strathclyde

Registration is now open. Please follow this link:


When you choose your conference rate, you will then be given the option of signing up for the conference dinner.

Accommodation

The following hotels within walking distance of Strathclyde University have single rooms available in late April, starting at £35 (Euro Hostel, dorm rooms available for less) and up to £96 (Mercure) per night.

Premier Inn – Glasgow City Centre (George Square)
Mercure Glasgow City Hotel
Millennium Hotel Glasgow
Brunswick Hotel
Moxy Glasgow Merchant City
The Z Hotel Glasgow
Euro Hostel Glasgow

How to get to Strathclyde University

For travel information please visit:

https://www.strath.ac.uk/conferencingandevents/attendinganevent/gettinghere/

To find the Collins Building, see: https://www.strath.ac.uk/maps/?building=collinsbuilding