
Article by an MPIFG researcher

Oonagh Fitzgerald, Colin Crouch: Brexit and the Long, Baffling Goodbye: Oonagh Fitzgerald in Conversation with Colin Crouch.

In: Literary Review of Canada 26(7), (2018). Canada Council for the Arts

The original publication is available at the publisher's web site:

<https://reviewcanada.ca/magazine/2018/09/brexit-and-the-long-baffling-goodbye>



Brexit and the long, baffling goodbye

Oonagh Fitzgerald in conversation with Colin Crouch

OONAGH FITZGERALD AND COLIN CROUCH

In a summer rife with Brexit drama, Boris Johnson encapsulated the mood of things when he resigned, with characteristic flair, from his post as foreign secretary. The Brexit “dream is dying,” he wrote in his July 9 letter to Prime Minister Theresa May, some two years after Britain voted to leave the European Union. Johnson was one of several pro-Brexit ministers and senior politicians to resign after May’s plans for a soft Brexit were adopted. Six months before the Brexit deadline of March 29, 2019, and a month before EU leaders meet to discuss the withdrawal treaty, turmoil still reigns. By mid August, echoing a growing theme of “Bregret,” the *Independent’s* petition for a second referendum had more than 500,000 signatures, and EU officials had expressed concerns about the possible collapse of the May government.

Who better to reflect on this ongoing tumult and the path ahead than the British political scientist and sociologist who coined the term “post democracy”? Colin Crouch, professor emeritus of the University of Warwick, has explored the prescient idea in books including *Coping with Post Democracy* (2000). In *The Globalization*

Backlash, forthcoming from Polity Books in December, he tackles recent trends toward economic isolationism, and debunks challenges mounted to globalism by both right and left.

He spoke with Oonagh Fitzgerald, director of the international law research program at the Centre for International Governance Innovation (CIGI) in Waterloo, Ontario. Fitzgerald, who has also been a special advisor to Justice Canada for international law, examined Brexit's wide-ranging repercussions, the dynamics of undoing international agreements, and globalism in a populist era in the timely book *Complexity's Embrace: The International Law Implications of Brexit*, co-edited with Eva Lein and published this year by CIGI Press.

They spoke via teleconference.

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Oonagh Fitzgerald: There was a lot going on this summer with the much-anticipated cabinet “away day” at Chequers, the announcement of the government position on Brexit—finally—and then the immediate resignation of a slew of key people. July must have been a horrible month for Theresa May, capped off by the divisive NATO meeting and President Trump's visit, where he criticized her and gave a ringing endorsement to Boris Johnson as future PM! The European Commission's first reaction suggested perhaps they would be able to work with the new government position, but it's not so clear that they can, or even that the U.K. government can hold itself together in support of the supposed agreement. Where do you think this is heading, Colin? It looks so bleak and there's this sense of inevitability about falling out of the EU rather than an orderly, well planned Brexit.

Colin Crouch: Well, the whole thing has been a mess from the start because the original proposition to leave the European Union was not a proposal from a government. It was a referendum campaign, which meant no one involved in it was responsible for holding any position. The policy of “remain” was clear enough, but “leave the EU” could be associated with about twenty different possibilities, none of which were discussed, and none of which became government policy. Then, in March 2017, the government launched what is called Article 50, which started a two-year-long procedure for leaving the EU. But for months and months and months after that the government itself had no agreed-upon position to put to the EU. The government was unable to negotiate. Finally, as you described, in July Theresa May achieved a position, but this is just a few months before the whole thing has to come to an end, and immediately that led to an enormous crisis within the governing Conservative Party. So we have no idea where we are.

Fitzgerald: At the time of the referendum, one of the things that was so surprising from an outsider’s point of view—and especially from an international law perspective—was how unprepared the U.K. government was for the result. They really didn’t seem to have thought about how they would undo all these international law relationships and recreate them in a way that would enhance the sovereignty of the United Kingdom and the role of the U.K. Parliament.

It was beyond ironic that they wanted to do all this without even involving Parliament. They took the position that because international law commitments are made through executive action in the U.K. (as in Canada), the executive can simply unmake international law without Parliament’s involvement. But EU law only

took effect within the U.K. because Parliament enacted the *European Communities Act* in 1972. Since then, EU law has proliferated and fundamentally changed the law of the United Kingdom.

After a nasty legal battle, the U.K. Supreme Court ultimately ruled that unweaving the fabric of current U.K. law did require Parliament's deep engagement, but it seemed really odd that the government had not recognized this central role of Parliament.

Crouch: Yes, especially since the whole thing was about taking back sovereignty for Parliament. One must remember that some real "hard Brexiters" thought the EU would collapse if Britain left it, so they didn't think they would be leaving anything that existed. Others thought, and I believe this remains the majority view within the government, that Britain's position is stronger than that of the European Union; that we are somehow mightier and economically more significant than them, which means they are going to have to give in. So it's a game of chicken: two cars hurtle toward each other until one drives off the road to avoid the collision, and that depends on both drivers making a calculation about which is the stronger party. There is a serious danger there of the game ending in a crash.

Fitzgerald: It seems to be a death wish, because there's no economic data that suggests that the U.K. is going to be better off by leaving. Some Leave voters may have thought their jobs were being taken by immigrants, that economic opportunities were going to other EU member states rather than to the U.K., or that the U.K. could forge better trading relations on its own. Those people

The Conservatives have always been divided between romantics and pragmatics. The romantics are now sailing the ship and it is a vision of a buccaneering, freeloading, swaggering British Empire.

will be sorely disappointed. What's the potential of the crash-out and if it happens, what happens next? Would there be civil disorder, rioting in the streets?

Crouch: No, probably not, people would just get sullen and angry. But you must also remember that some people in the Conservative Party really do want a very hard Brexit, a car-crash Brexit, because they believe Britain comes out more powerful from that. But the majority of ordinary people have no idea really what it's all about. The referendum campaign was mainly about immigration, and the unrelated issue of Islamic terrorism, which somehow is made to look as though it has something to do with the EU. More recently the main advocates of Brexit have been saying, "Well, this isn't about immediately getting better off." Jacob Rees-Mogg, one of the leading Conservative MPs in the campaign, said last month that we won't see the benefits from Brexit for fifty years. Then Nigel Farage, the former leader of the UK Independence Party, said recently that he never said Brexit was about being better off economically; it's about regaining sovereignty. So it was about things like stopping immigration and going back to the old colour of our passports instead of having European passports—a bigger issue than the future in the referendum campaign.

It's a very strange thing that a mature democratic nation has decided to end forty-five years of economic relationships—not just with its neighbours, but with other parts of the world, too—without having any alternative plan.

Fitzgerald: There's also the angle of Cambridge Analytica and disinformation, where social media was being used to target people with messages tailored to make them sympathetic to the Leave campaign but for very different, even contradictory reasons. Apparently there had also been soothing messaging to liberal-minded

young people about how the EU was not receptive enough to Commonwealth nations and had policies exploitative of the developing world, whereas an independent U.K. would be able to strengthen these important relationships with former colonies. Brexit was thus somehow portrayed as an improvement on the EU.

Crouch: Well, there are many contradictions. A fundamental one was that it's quite likely that a lot of people who voted for Brexit did it for what we call anti-globalization reasons. I think for them it wasn't so much economic globalization as cultural globalization: the dislike of having to mix so much with foreigners, the dislike of immigration, the fear of Islamic terrorism. There was the idea of "Let's just be Britain controlling our borders." On the other hand the leaders of Brexit very much want intensified globalization. The prime minister, herself a very reluctant Brexiter, has coined the slogan "Global Britain." The idea is, instead of being part of little Europe, to be global. Very frequently they say Britain will be the Singapore of the Atlantic, meaning a country with very little social protection, very low taxation, and in which people are exposed to very intensive globalized competition.

Fitzgerald: I guess it's that huge contradiction that has made it so difficult for the U.K. government to come up with a position. They want to continue to have trade with Europe, but they want to set their own terms. They don't want to be subject to EU regulation and yet that's the only way to have smooth, uninterrupted trade with the EU. They want to have an invisible border between Northern Ireland and the Republic of Ireland and yet this will require deep compromises on the hardline stance on Brexit.

The airwaves are full of this rhetoric about taking back control, making our own laws, and successfully developing new trading relationships with the whole world including the European Union.

This makes no sense. You cannot have easy trading relationships with a huge bloc like the European Union without conforming to their regulatory standards. You cannot be part of the EU's global value chains without conforming to their global standards and participating in a customs union. Brexiters do not want these trade-offs. Prime Minister May really did need to lock up her cabinet, take away cellphones, and knock heads to get people to come to a possible compromise.

Crouch: Yes, but there is such a strong disagreement among them. A very important element of the government, including the man responsible for foreign trade negotiations, Liam Fox, says there's absolutely no need to have special relations with countries near to you. Fox wants Britain to join the association of Pacific Rim countries [Trans-Pacific Partnership]. And obviously Brexiters want very special relationships with Donald Trump. So there is a desire to just start all over again. There is also a very deep belief that somehow the Empire will come back, that the Commonwealth will turn into a trading bloc. Then there are others who say, "No we didn't want this; we wanted something much more moderate." This includes people who believe that the European Union is much more dependent on us than we are on them, and so we can have what we want—as Boris Johnson repeatedly said, "We're going to have our cake and eat it too."

Fitzgerald: If it was truly the case that the U.K. was stronger than the EU, would it not have been better to say, "Let's stay in the EU and shape it in our image or have more influence over it"?

Crouch: Yeah, I think that's the view Margaret Thatcher would have taken, because, although she was certainly an English nationalist, she never acted against what she saw as practical economics. The Conservative Party in Britain has always been

divided between romantics and pragmatics. The romantics always get sat on and pushed down, and the pragmatics always win. This is the first time really since the 1840s that the romantics have been on top and it has absolutely horrified the business community. The romantics are sailing the ship and it is a vision of a buccaneering, imperial, freeloading, swaggering British Empire.

Fitzgerald: Which is sort of belied by the types of statements Trump makes when he visits his potential trading partner, right? It shows what it's like to be a buccaneer in the face of a bigger buccaneer.

The U.K. may want to be the new buccaneer, taking on the world with the Royal Navy and winning back its Empire. But the fact is that so many other nations have seen the benefit of grouping with others, in the European Union, the North American Free Trade Agreement, Mercosur, and the TPP [Trans-Pacific Partnership], for example. All such groupings offer preferential benefits to member states but require tremendous, deep compromise. Does little Britain have a vision for how to negotiate with these regional and plurilateral behemoths?

Crouch: I think the members of extreme Brexit, including and especially Liam Fox, would say that in the new internet world, geography is irrelevant. That we will be the first nation to realize this and to realize that we could join the Pacific Rim association, which he thinks you don't have to be in the Pacific to join. This is forgetting something that students of regional economies understood quite a few years ago, that in a world where everyone can use the internet, yes, everyone can do electronic trading on an equal basis, but there are added things that you get by locality, by having close relations with neighbours. There are all sorts of costs that are reduced, and communications are easier. So if you decide to become just an

internet nation, with no local roots, you've only got what everyone else has got, and I think this is a fundamental misunderstanding in Britain.

Fitzgerald: And you can be copied by anybody, right? You have no special advantage at that point.

Crouch: Absolutely. At another level Brexit is an example of something much more general going on in the world at the moment, which is a retreat from globalization, and in particular an anxiety about contact with foreigners, of which I think Islamic terrorism has been a particularly important part. Also associated with that is the rise of important movements on the extreme right, which have as an agenda not just xenophobia but also a desire to kick over the traces of established order, institutions, and constitutions. You see this with Donald Trump, you see it with post-Brexit, and you see it with various other countries in Europe. There's a bigger picture of which Brexit is just one example.

Fitzgerald: It does seem that the narratives that sufficed in past decades are no longer working. The narrative that it's just good for everyone to do free trade was simplistic, and is obviously falling apart at the seams. And for different reasons that you discuss in your book: The concerns of the right now coming to the fore, when in the past it was the concerns of the left. We need new narratives to be created to explain the values of global interaction or globalization, the values of trade and also its risks and how to mitigate them. Even the World Bank, World Trade Organization, and the International Monetary Fund, in a joint 2017 report¹ noted that while globalization and free trade had been good at raising incomes and making consumer goods more affordable, they have left a lot of people behind. In Canada the federal government is promoting a new narrative, and I think some European countries are pushing it too, of a progressive trade agenda:

the idea that as countries negotiate trade agreements they find ways to address issues of economic equality and social inclusion, gender equality, and environmental sustainability. Our government is also talking about strengthening international rule of law so that it is more just for people, not merely economically efficient.

Crouch: Yes. Globalization can be reformed. It's possible to have social policy accompanying globalization, in terms of regulating labour conditions in the developing countries, both in the interest of their own workers and in the interest of reducing the heat of competition on the advanced world. It's also possible to have social and economic policy for attending to those regions and cities and industries that lose out in globalization, and this in a way is a repetition at a global level of what we did during the course of industrialization within individual countries.

Fitzgerald: It's also an interesting history lesson because just after the Second World War, there was a more holistic international agenda. In the Charter of the United Nations one discerns a concern that the world could never get lasting peace and security without protecting the human rights of all people and providing economic and social development opportunities for all people. That human rights, social programming, and economic development together foster global security. Neoliberalism seems to forget this historic unity of purpose. The progressive trade agenda could encourage trading nations to rediscover these important ideas.

Crouch: Yes. That's what we have to hope is going to happen now. It may be but that the ruling institutions nationally and globally have received a very sharp shock from all this, and there will therefore be a desire for reform within the neoliberal camp. Meanwhile there's an alternative-right-wing politics that we thought we'd forgotten about years ago, which says that you can actually rally people behind

symbols of cultural nationalism and you don't actually have to bother about their economic circumstances very much. That's the new contestation, I think.

Fitzgerald: It really requires that people become more politically active. This seems to have happened in the United States, where there now seem to be a lot of grassroots movements. Do you think that will happen in the U.K.?

Crouch: Well at the moment the U.K. is caught in a kind of freeze frame. The whole country is just in Brexit, and it's not debating Brexit, but Brexit freezes everything else. There's a very widespread view, including among many people who voted to remain, that we just have to get this over with; a belief that somehow the day we leave the European Union next March, it will all be over. But of course that's when it all starts. At the moment we're still full members of the European Union, we still get everything the EU offers: freedom of movement, freedom of goods and services. This country is in a very strange position actually. Although we've got these similar tensions and crises in Italy, Hungary, Poland, the U.S., and elsewhere, it's only in Britain where we've got this curious freeze frame.

Fitzgerald: It is really odd. There is ongoing discussion of transition periods, backstop proposals to address the Irish border issues, and a possible extension of the Brexit deadline. In July, after the Chequers meeting, Michel Barnier, the European Commission's chief negotiator for Brexit, indicated that any extension of the March 29, 2019 Brexit deadline would need the unanimous support of all twenty-seven remaining member states, and that the commission wasn't inclined to extend if there was no clarity about what where the negotiations were heading. There wasn't going to be just an automatic extension to let this navel gazing continue forever. Now

there's a growing sense that there could be no deal and a hard Brexit, and that has started other discussions: What will they do about trucks stuck in lengthy queues at Dover? How will they avoid food supply disruptions so people in the U.K. have food?

Crouch: Yes, these discussions started because now we're in August, which we always call the silly season politically because nothing really happens—small events get bigger prominence than they should and no one really confronts anything real. When we all come back again in September, October, people might start confronting it all. But this remains a nation totally unprepared for what is happening to it.

Fitzgerald: I was really interested, as a Canadian, to look at the voting patterns on the referendum, particularly the fact that Scotland and Northern Ireland voted to remain. In Canada the province of Quebec has held two referenda on the question of secession. The Supreme Court was asked to provide an advisory opinion on how Quebec and the rest of Canada should deal with a referendum on unilateral secession. The Supreme Court was really careful to say that “the democracy principle...cannot be invoked to trump the...rule of law, [and] the rights of individuals and minorities” in the rest of Canada. In other words, minorities and individuals must be considered when trying to make a fundamental change such as breaking up a country. (Or in the U.K.'s case, breaking away from the EU.) The court noted that while such a breakup involves many political issues that courts would not necessarily feel competent to rule upon, the way governments deal with those issues will affect the legitimacy of the process and of new constitutional arrangements.

Now Scotland is unhappy about being dragged out of the EU just because of the rest of Britain. Northern Ireland is concerned about preserving the conditions that have fostered decades of peace. Is the U.K. government doing enough to build support among dissenting minorities?

Crouch: No, because after all the majority for Brexit was relatively small one: 52 percent versus 48 percent. So the minority that wanted to remain is a very, very large minority. But the general treatment of it in the mass media and by government—and also by the opposition Labour Party, which has now become a pro-Brexit party—has been that the minority counts as zero; that it's 52 percent versus zero. In fact if you look at the number of adult persons entitled to vote, only 37 percent actually voted for Brexit. That group is seen as the only one that counts. Especially now that the Labour Party has become a pro-Brexit party, although originally it wasn't. Apart from the small Liberal party, and for Scotland the Scottish nationalists, there are no spokespeople for the other side.

Fitzgerald: Why is that?

Crouch: There are two main reasons. First, part of the Brexit vote was a working class, anti-immigrant, racist vote, and Labour is very, very worried about losing that vote. So they want to reassure that it's willing to be a xenophobic party, certainly against Europeans. They're never racist against Muslims and Hindus because these are mainly people who come from the Commonwealth and they get the vote. Europeans don't have the vote, so you don't need to bother. So there's partly that rather cynical reason. Secondly, the old left wing of the Labour Party has always been hostile to the EU, which it sees as a "capitalist club" that would prevent its members from pursuing protectionist economic strategies—which latter point is of course true.

Fitzgerald: The last two years have been a rude awakening for anyone who imagines the development of global rule of law is essentially linear, knitting all nations and peoples closer together, moving inexorably forward to a more just and cosmopolitan world order. It has been a time of unmaking international law, the ties that bind, with major crises in regional, plurilateral, and multilateral arrangements. Just think of the challenges thrown up to the European project by Brexit, to North Americans by President Trump's assault on the North American Free Trade Agreement, and to the world by his planned withdrawal from the Paris Agreement on climate change and attacks on the World Trade Organization. We can't afford to ignore international law's detractors. It's now essential to reinvigorate support for a rules-based international order, and this means working to improve global rule of law to be more responsive to the challenges we face today, whether economic, social, cultural, or environmental. With some dismay, I foresee lots of work for international lawyers and political scientists.

Oonagh Fitzgerald is the director of the international law research program at the Centre for International Governance Innovation (CIGI) in Waterloo, Ontario. She is the co-editor with Eva Lein of *Complexity's Embrace: The International Law Implications of Brexit*, published in 2018 year by CIGI Press.

Colin Crouch is professor emeritus of the University of Warwick. His latest book, *The Globalization Backlash*, is forthcoming from Polity Books.