

BREXIT AND THE CONSTITUTION: STILL FIT FOR PURPOSE OR BROKEN?

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1. During the twentieth century there was general consensus that our uncodified constitution is supported by three pillars: the principles of parliamentary sovereignty and the rule of law, buttressed by constitutional conventions.
2. The meaning, practical application and hierarchy of each of those pillars has been contested over the years, as has the question as to whether ours is a rights-based democracy or a statistical democracy (where the majority as counted in elections or referendums might rule without constitutional constraint).
3. Brexit has provided an unexpected stress-test of the endurance of these constitutional arrangements. Sovereignty of parliament (representative government) has been challenged by popular sovereignty (referendums); and by the executive (the place of prerogative power in *Miller*, plus the use of Henry VIII clauses in the Withdrawal Bill). There is a sustained attack on the constraints on parliament by means of the EU Charter of Rights and the Human Rights Act.
4. The binding effect of conventions (even ‘statutory conventions’) was undermined by the courts in *Miller* and by parliament in the Sanctions and Anti -Money Laundering Act 2018 (in respect of the British Overseas Territories).
5. The rule of law is in frequent tension with the executive and Parliament. See *Jackson*, *UNISON and Privacy International* (re access to justice), and *Gallagher* (equality). The role of the Lord Chancellor in protecting the rule of law was highlighted after the decision in *Miller* at first instance.
6. Are these constitutional contestations healthy and inevitable, or are they the symptoms of a broken constitution that needs urgent fixing?