

Brexit, as a democratic exercise, prompts the need for a normative theory of political disintegration



*Brexit has given rise to a range of critical issues. For example, was the composition of the electorate for the referendum adequate? What follows from the fact that some parts of the UK voted to remain? What will happen to resident EU citizens? Will the EU try to set a warning example in the withdrawal negotiations? It hence prompts the need for a normative theory of disintegration, writes **Markus Patberg** (LSE).*

Behind these questions about Brexit looms a challenge for political theory. We are used to asking: What justifies the existence of public authority? We are not used to asking: How should we proceed if we want to dissolve it? Canonical works such as Hobbes's *Leviathan* have taught us that having a political order is preferable to not having one. Our research agendas have focused on how public authority can be established in a legitimate way and how it should be structured, in particular in terms of individual rights and political participation. Brexit, by contrast, aims at a revocation of political power. In an unprecedented move, a member state seeks to divest the EU of the competence to subject it to binding decisions. This development prompts the need for a normative theory of disintegration.

The departure of a member state from a treaty-based supranational polity should be distinguished, terminologically and conceptually, from other types of exit such as withdrawals from more standard international treaties that do not constitute political systems, or secessions from states. As a supranational polity, the EU is a compound order below the threshold of a federal state that engages in the exercise of public authority and provides individuals with a form of citizenship including political rights. Referring to the positive notion of European integration, we can use the term 'disintegration' to denote the separation of one or more subunits from such a political entity.

From a normative point of view, disintegration is not simply integration in the opposite direction. We cannot assume that the same standards of legitimacy apply in both cases. For example, it makes a fundamental difference whether citizens gain individual rights and the status of members in a supranational political community through an EU accession or lose them through withdrawal.

Consider how Brexit calls into question the life plans of UK citizens residing in other EU member states as well as of EU citizens residing in the UK. Many people have built their lives relying on their rights as EU citizens. They have moved to other countries, where they have taken up work, started families, and established all kinds of social ties. For such reasons, the stakes of disintegration are much higher than those of an initial decision to integrate. While the fact that the UK citizens will lose their political rights at the EU level may appear less dramatic in terms of its consequences, it gives rise to a new variant of the old question of whether it is legitimate to vote against democracy.

The need for a normative theory of disintegration becomes particularly apparent in the debate about the democratic legitimacy of the Brexit referendum. Leaving details aside, three competing positions have emerged. The 'sovereignist' view focuses exclusively on the UK and is concerned with the question of whether the popular vote was organised in the right way. While there is some criticism regarding the exclusion of certain groups from the electorate (e.g. British expats in the EU), the general perception is that none of this fundamentally undermines the democratic legitimacy of the decision. The 'affected status' view points out that Brexit affects the status of all EU citizens and on this basis criticises the unilateral nature of the Leave vote. This camp holds that EU withdrawal should require the approval of all Europeans, or even be regarded as democratically illegitimate altogether because it deprives the citizens of the leaving state and the remaining countries of the possibility to regulate common problems through a shared structure of self-government. Finally, the 'civil rights' view directs our attention to the fact that, as a result of Brexit, the citizens of the UK will be stripped of their legal entitlements as Europeans and lose the possibility to take part in the EU's democratic processes. This is seen as illegitimate because basic rights and political autonomy are considered irrevocable.



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None of these views clarifies which features of the political order in question are relevant for assessing the legitimacy of exit. The sovereigntist view treats the EU like an ordinary club that can be left simply by submitting a cancellation. Thus, it fails to consider path dependencies that might result from integration, such as new obligations vis-à-vis citizens and non-citizens that constrain a state's withdrawal ambitions. The affected status view seems to imply that the EU has developed beyond a voluntary association. However, we cannot ignore the fact that no country has signed over its right to leave the supranational polity. The civil rights view overlooks the derivative nature of the rights and freedoms of EU citizens, which is to say it does not factor in that an exit from the EU does not deprive the citizens of the withdrawing state of basic rights and political autonomy per se, but only with a view to a higher-level structure of public authority – of which they no longer form part.

The point here is not simply that political theory disagrees about the normative requirements of disintegration. Rather, what I am getting at is that so far the literature has failed to come up with an adequate framework of analysis. We need to develop a systematic understanding of what it means to leave a supranational polity. In this context, we should refrain from presupposing highly specific interpretations of the nature of the EU and limit ourselves to core features – such as the fact that it is a voluntary association, that it makes binding law, or that it awards citizens specific entitlements.

A normative theory of disintegration would specify who is allowed to trigger an exit, under which conditions, and through what kinds of procedures. It would clarify the 'ratchet effects' of integration, that is, explain what side-constraints a withdrawing country and the remaining member states respectively have to observe in a process of separation, and what rights individual citizens can insist on no matter what. Most likely, the result would be something much more elaborate than what Article 50 TEU requires.

With a view to Brexit the horse has of course already left the barn. However, the fact that one country has made use of Article 50 TEU has transformed EU withdrawal from an abstract possibility, never supposed to become reality, into an actual political option available to all member states. Considering the possibility of future exits as well as the malaise of the largely improvised departure of the UK, a normative theory of disintegration appears as an urgent desideratum. Even if we do not wish for another exit from the EU, we should make sure that, in case there is a next time, the actors involved do not again have to make it up as they go along.

This post represents the views of the author and not those of the Brexit blog, nor the LSE.

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