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Not What the Bus Promised: Health Governance after Brexit

by Tamara K. Hervey, Ivanka Antova, Mark L. Flear, and Matthew Wood,

Oxford: Hart, 2023, 280 pp., £85.00

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Not What the Bus Promised is a study of changes in UK health governance resulting from the Brexit process. It reports on a multi-site, collaborative research project which was both cross-disciplinary, drawing on the diverse expertise of its four authors, and inter-disciplinary, integrating these perspectives to provide novel insights on a well worked field along with significant advances in method. The National Health Service (NHS) is at the heart of each strand of the study, which takes as its organizing focus the claim that withdrawing from the EU would allow the UK to save £350 million a year which could be used to ‘fund our NHS instead’. Displayed on a themed bus by the Leave campaign, this was perhaps the most memorable and widely circulated image of the 2016 referendum.

The authors test that claim in the first instance through doctrinal analysis, both comprehensive and acute, of Brexit-related legal developments affecting access to health care, staffing of health services, cross-border medical research, trade law and health, and the export/import of medicines and medical devices. This is done with an acceptance of the salience, though not the exclusive significance of blackletter law. They are scrupulous in highlighting the potential for productive innovation in health policy opened-up by withdrawal from the EU, as regards early approval of new medicines for example. But the balance sheet is undeniably negative, the result of increased legal uncertainty in most of the areas discussed, a loss of standing for British institutions in European and global research networks, and the demoralization of NHS staff from EU countries. These losses have been compounded by a failure of successive UK governments to take up specific Brexit opportunities and an unwillingness to reverse the EU’s longstanding prioritization of the ‘market’ over the ‘social’ in health policy framing. (The authors’ clear sightedness on the latter is commendable, it should be added, given the disastrous impact of EU-imposed austerity programmes following the 2008 financial crisis on health and welfare in Greece, for example.)

But the book does much more than this. Analysis of legal technicalities is woven into an ambitious qualitative study of attitudes to Brexit and its relationship to the NHS among ‘experts’ and ‘ordinary people’. This allows varied meanings of ‘the promise on the bus’ and responses to it to be recounted and explored. Interviews with policy makers, legislators, professionals and civil society groups, thus, reveal widespread concern with the lack of attention paid to the health implications of Brexit at the most senior levels, from the referendum campaign in 2016 to the ultimate conclusion of the EU-UK Trade

Co-operation Agreement in 2021. Many respondents remarked on a childlike reluctance to face up to the difficulties created for the NHS by the hard Brexit sought and obtained by the governing party. The Leave campaign's assertion that the 'public has had enough of experts' gets a quietly damning response here.

This contextual strand is underwritten by a commitment to reflexivity and explicit positionality which will mark *Not What the Bus Promised* as a standout contribution to socio-legal methodology both within and well beyond health law. Over four preliminary chapters the authors set out the intellectual and political stakes for them and their interlocutors in doing research on what was a profoundly divisive process all round. Each of them documents their academic trajectory into and through the research. Each provides engaging detail on the personal impact and meaning of Brexit for them in terms variously of strained family relations, uncertain legal status, and the challenge to a life's work as a scholar of EU law.

This commitment was brought to bear most prominently in their engagement across field sites in the north of England and in Northern Ireland with 'ordinary people', a category which the authors appropriately problematize in theory, as well as showing its fluidity in practice, given the tendency of nominal 'experts' to share personal insights, for example. They adopt an 'ethnomethodology' aimed, not at finding singularly objective knowledge, but rather at meeting the demands of an ethical commitment to epistemic justice. They note the tendency of many academics to dismiss Leave voters are merely ignorant or racist, 'left-behind' by social and economic progress. As result, rather than formal interviews, they seek to enable those they encounter to speak (more) for themselves, through the technique of photo elicitation.

Passers-by in shopping centres were, thus, presented with a picture of the Leave campaign bus and offered the chance to discuss their reaction to it. These conversations, which ranged across political aspirations and anxieties, as well as an unexpected engagement with 'legal technicalities', were coded and interpreted using humanities techniques, notably narrative analysis, paying attention to the use of image, idiom and metaphor. This has yielded telling insights. Many respondents confirmed their awareness throughout that the claim regarding the UK's alleged £350 million contribution to the EU and its availability for health spending was 'bullshit': speech intended to persuade without regard to its truth.¹ Those who voted Leave felt betrayed by the politicians who had made the claim but failed to deliver on it. At the same time many, resident in post-industrial regions 'left behind' by central government, also expressed a sincere attachment to the NHS as a valued common enterprise. They hoped against hope that the promise of more resources and better health care might come true, notwithstanding the mendacity of its promoters. There is a poignancy to the disappointed longing here which recalls the premise of the 2004 film *Good Bye Lenin!*² There, a woman emerging from a coma having missed the fall of the Berlin Wall is convinced (for a while) by her family, not only that East Germany has endured as a functioning state, but that it has made good on the socialist goals of equality and welfare which its leaders had hypocritically proclaimed and to which she had been attached.

Not What the Bus Promised also makes a valuable empirical contribution to our understanding of health law under devolution. Largely neglected in debates during the referendum itself, Northern Ireland ultimately proved to be the crucible within which the final shape of Brexit was determined. The Leave campaign's vision of insular self-sufficiency, one which resonates throughout British history from the Reformation to Dunkirk, came up hard against the fact that the United Kingdom in fact shares a land border with the rest of Europe. The book patiently documents the consistently negative consequences of Brexit for health provision across that border. The mobility of patients, staff and medical products between north and south had been facilitated by the Belfast/Good Friday Agreement (1998), itself

¹ See HG Frankfurt, *On Bullshit* (Oxford, Princeton University Press 2005).

² *Good Bye Lenin!* (Germany 2003, Director Wolfgang Becker).

underpinned politically by common membership of the EU, and a filigree of EU legal rules and standards which the authors set out.

These advances were particularly salient in the locations where the authors carried out their fieldwork. Derry/Londonderry and Newry had both been ‘left behind’ following the 1921 partition of Ireland: by discrimination in the allocation of resources within Northern Ireland and as a result of the violent campaign to overthrow it. Between 1998 and Brexit, the peace deal had functioned as an ‘incompletely theorized agreement’,³ enabling social (and legal) progress at ground level by detaching it from the deadlocked constitutional claims of Irish nationalism and British unionism. Resulting gains, like the ability of residents on either side of the border to access specialist health care on the other side, were gravely threatened by Westminster’s willingness to countenance a no-deal Brexit resulting in a hardened frontier. A round of contradictory promises regarding the absence of borders both within Ireland and within the UK were made and not kept.⁴ Again, the authors found ‘experts’ criticizing the official attitude of neglect and irresponsibility. ‘Ordinary people’ named the politicians concerned and called out the ‘bullshit’ for what it was. The authors conclude this important book with a plea for epistemic modesty and researcher humility, well exemplified in their patient legal analysis, their respectful empirical work, their attention to the nuance of time and place, and in their sympathy with incremental change and ‘things being various’.⁵

³ C Sunstein, *Legal Reasoning and Political Conflict* (Oxford, Oxford University Press 1996).

⁴ The Windsor Framework agreed by the EU and the UK in 2023 has muted some, though not all related controversy, see LC Whitten and D Phinnemore, *Implementing the Windsor Framework*, UK in a Changing Europe (London 2023).

⁵ From L MacNeice, ‘Snow’, in E Longley (ed), *Selected Poems of Louis MacNeice* (London: Faber and Faber 2007).