

## **The People vs. Parliament: Hayek and the Role of Parliamentary Sovereignty in the Brexit Crisis**

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**ABSTRACT:** This paper explores the rise of right-wing anti-parliamentary populism in the context of efforts by the British government in 2019 to secure the passage of an E.U. withdrawal agreement through the House of Commons. It claims that the Johnson government's discourse during this period followed in the tradition of neoliberal constitutionalism in two ways. First, through the cultivation of the idea that the opposition parties used parliament as an instrument to deliberately restrict the executive from realizing the Brexit referendum result. Second, by reinterpreting the idea of sovereignty to suggest that it is vested in the fictional idea of "the People," rather than parliament. Anchored in Hayek's perspective that parliamentary sovereignty is the essential problem with contemporary liberalism, this strategy justifies the concentration of power in the executive by advancing the logic that only it can serve as an adequate "check" against the arbitrary powers of an unrestrained legislature.

**KEYWORDS:** Neoliberalism, Liberalism, Brexit, Hayek, Parliament, Populism.

### **Introduction**

As the deadline for the United Kingdom (U.K.) to withdraw from the European Union (E.U.) approached in the final months of 2019, the British public went to the polls in a so-called "people vs. parliament" election in which Prime Minister Boris Johnson presented himself as a champion of "the People" whose interests were being obstructed by legislators determined to thwart the referendum result. The spectacle of a prime minister campaigning against the same hung parliament from which his government derived its authority at a time

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of national crisis, highlighted a deepening legitimization crisis of the British state and ruling class brought about by several decades of neoliberal public policy.

As the British government proved incapable of carrying the heavy burden of arriving at a coherent negotiating position with the E.U., these contradictions were displaced as a crisis internal to the institution of parliament itself, shifting the terrain of the Brexit debate from civil society to the House of Commons. Likely recognizing that a “people vs. parliament” election would be favourable ground upon which to fight an election given that the Leave campaign enjoyed success in many former Labour Party strongholds, the Johnson government sought to portray the immobilization of British society not as an outcome of a state apparatus weakened by decades of neoliberal public policy, but the result of a sovereign parliament seeking to frustrate the will of the People.

This article seeks to account for the rise of an anti-parliamentary populism that has become increasingly common on the right. Focusing on the circumstances surrounding the emergence of this political strategy in the U.K, it explores the *Hansard* records in September and October 2019 to demonstrate how the rhetoric employed by the Johnson government in the weeks leading up to the October 31st deadline to withdraw from the E.U. was influenced by the ideas associated with the neoliberal tradition. Through a consideration of Friedrich Hayek’s thought, I claim that the Johnson government’s rhetoric as the E.U. withdrawal deadline neared, reflected a ‘neoliberal’ approach to constitutionalism.

Following in the Lockean tradition, Hayek believed that since human beings already knew how to live in the period before the formation of government, the legislature should be limited to the formalization of certain immutable laws. He claimed that liberalism began to lose its way in the early nineteenth century when it embraced the principle of universal egoism, which posited that power ought to be continually held to account by granting sovereignty to a representative parliament. What Hayek (1982) called the “pernicious principle of parliamentary sovereignty” was the primary mechanism through which the expansion of the welfare state had been achieved, and was responsible for the decline of liberalism, paving the road for the perpetual growth of government in a totalitarian direction (Vol. III, 2).

The Johnson government’s anti-parliamentary rhetoric revealed its Hayekian influence in two ways. First, it made the case, consistent with neoliberal thought, that parliamentary governance was necessarily saturated in politics, prone to superfluous politicking that distracted it from regulating the market and

improving Britain's international competitiveness. Using increasingly inflammatory language to portray the opposition as irrational and compromised by elite interests, the government made the case that these forces were using parliament as an instrument to deliberately block the will of the People. Second, the Conservatives reinterpreted the idea of sovereignty, making the case that it was derived, not from parliament, or even from the entire body politic, but rather in the fictional idea of the People. The People, in this case, was very narrowly defined as the 17.4 million, mostly white, Britons who voted to Leave (Virdee & McGeever, 2018). This conception of sovereignty, which was flatly rejected by the Supreme Court in its decision on prorogation, nevertheless became the grounds upon which the government sought to publicly justify an end-run of parliament.

### **The “Old” and “New” Forms of Liberalism**

For Dewey (1964), liberalism is a political system designed to protect individual natural rights that exist prior to the formation of concrete social organization, such as life, liberty, and property (620). There have been principally two historical forms of liberalism. The first, which I shall refer to as “old liberalism,” is represented by the logic of John Locke, who claimed that the state's central function should be to secure certain fundamental “natural rights” that governed civil conduct prior to the establishment of formal political society. Though the liberal state was grounded in a social contract, initially, political, and legal rights were only extended to a narrow class of property-owning men.

It was not until early in the nineteenth century that a “new liberalism” came into existence. This new liberalism emerged from a fundamentally different epistemology, which prioritized rationalism as well as responsible government and democratic rights over the natural law tradition. The idea persisted during this period that it was possible to use human reason to overcome old structural inequities. It was under new liberalism that reforms to the electoral system to expand the democratic franchise to all adults and responsible government were realized.

Locke drew his idea of government from his conception of the state of nature. Natural laws identify certain fixed and immutable truths about the nature of the world that are not subject to reform. Although human beings have appetites and aversions that guide their behaviours, they have sufficient reason to live in accordance with evolved principles of morality and conduct in civil society without the need for a government. However, the potential for transgressions of these laws meant it was in the rational interest of individuals to leave the state of

nature to form civil government, the end of which should be to establish a framework to secure the natural rights of man through the enforcement of these principles as formal laws. Political authority should be vested in a legislative assembly with the necessary power to make and enforce the laws of nature as well as to secure property by retaining the power to make legitimate use of violence on behalf of these principles.

Although Locke believed the legislature should be the supreme law-making body, its authority should not be *sovereign*. Since individuals already knew how to live together before the establishment of government, there was no need for parliament to legislate beyond the parameters of the laws of nature. Locke believed these laws of nature serve “as an eternal rule to all men, legislators as well as others. The rules that they make for other men’s actions, must, as well as their own and other men’s actions, be conformable to the law of nature” (72).

Any attempts to engage in active legislating beyond these established principles constituted a violation of the social contract and permitted the public to revoke their authority through the right to revolution. The legislature served as a sort of trusteeship, in which a group of individuals is granted power to make decisions on behalf of others but is only empowered to do so within the conditions that are previously specified under the nature of the agreement.

It was not until the beginning of the nineteenth century that the liberal tradition began to embrace the concept of universal legal and political rights beyond the confines of the natural law. English legal theorist Jeremy Bentham maintained that all human behaviour throughout history could be explained by a single philosophical maxim: the self-preference principle (SPP). The SPP functioned as an “all-comprehensive” view of human nature, in which “the self-regarding interest is predominant over all other interests put together” (Bentham, 1830, 5).

Bentham saw political institutions as vestiges of historical power relations, structurally embedding the hegemony of the ruling class by designing systems with laws, structures, and norms that consolidated their authority. The implications of the SPP as philosophical principle threw off the illusions of the natural law tradition that had been used to justify the preservation of class privilege. Instead, government could be studied in the abstract, as a coherent system with predictable outcomes. It followed that those public functionaries who acted without some other incentive to serve as a counterweight against their private interests, would inevitably behave with “sinister interest,” or intent.

Bentham contended that this had been true of the role of government throughout history (1830, 2):

“At all times—on every occasion—in every instance, the end actually pursued by the several sets of rulers, has been the promotion of the particular, and thence sinister interest of these same rulers. Look the world all over, in no one place, at no one time, has any arrangement of government and for its object, any other object than the interest by whom it has been made.”

There could be no Great Men or Philosopher Kings, but only pleasure-seeking and pain-averting beings, all of whom were subject to the SPP. Notions of “character” and “position-in-life” served as grounds upon which sinister interest was justified over the centuries and ‘locked in’ by legal structures that were organized to benefit the ruling few.

Bentham developed a system of radical constitutional reforms with the purpose of transcending structures that had developed over the course of hundreds of years to serve the interest of the ruling class. These reforms were based upon the notion of a *sovereign* parliament that would be omniscient (Halévy, 1928). The legislature would function as a “public opinion tribunal” that would operate like a large jury, while providing a forum to keep rulers “in check and keep its course within the paths indicated by the greatest happiness principle” (Bentham, 1830, 41). Political counterforces would ensure that rulers were continually scrutinized, requiring them to align their own interests with the public interest.

### **Hayek and the Crisis of Liberalism**

The beginning of the nineteenth century was the precise pivot point at which the neoliberal school believed liberalism had lost its way. Writing more than a century after Bentham, Hayek (1982) advocated a reconfiguration of the principles of liberalism as part of an effort to undermine the “constructivist rationalism” upon which modern political institutions had been structured (Vol, I, 28).

Hayek suggested that most of history had been guided by a series of practical lessons, traditions, customs, and norms learned and passed down collectively through the ages and established as general rules upon which political community is structured. The trouble with efforts to structure the law upon the

dictates of human reason, for Hayek (1982), was that it conceived of humans as having “an independently existing mind substance which stands outside the cosmos of nature,” thus granting them the authority and right to “design the institutions of society and culture among which he lives” (Vol. I, 17). Indeed, Hayek (1982) argued that “the whole history of constitutionalism” had been characterized by “a struggle against the positivist conception of sovereignty and the allied conception of the omnipotent state” (Vol. I, 61).

Any effort by individuals to supersede the general rules of conduct passed down by custom, constituted an abuse against freedom. Constructivist rationalism, in which political decisions are made by deliberate design, leads to “false conclusions” because it is not possible for any single person, or assembly of people, to understand “circumstances which we are not aware of and which yet determine the pattern of our successful actions” (Hayek, 1982, Vol. I, 12). Those who subscribe to the rationalist view, Hayek argued, exist under the spell of a “synoptic delusion,” in which they believe “relevant facts are known to some one mind, and that it is possible to construct from this knowledge of the particulars a desirable social order (Hayek, 1982, Vol. I, 14).

The variables that condition the development of the law “inevitably come in part from outside the law and can be beneficial only if they are based on a true conception about how the activities in a Great Society can be effectively ordered” (Hayek, 1982, Vol. III, 70). Both the market and traditional values function as an ideal guide for social organization because they are the result of abstract processes that lead to results that no individual has consciously planned.

Their outcomes are not pre-determined but are the result of individuals pursuing their own rational self-interest in ways that benefit the whole community by demonstrating how to best live.

Hayek believed that the preservation of these spontaneously evolved principles ought to form the foundation of the law. Following the Lockean tradition, he believed that the legislature should be restricted from actively *making* the law and should instead be focus on laying down and securing these intrinsic principles common to all members of the community. Such laws should be derived from knowledge “of which we are not aware, and which does not appear in our conceptual thought, but which manifests itself in the rules which we obey in our actions” (Hayek, 1982, Vol. II, 21).

This necessarily also meant that Hayek rejected the principle of popular sovereignty upon which the liberal tradition had been based. However, while Hayek (1982) believed the idea of popular sovereignty being vested in a leviathan

was a misguided, “anthropomorphic” fantasy, he did not reject the idea of popular rule outright (Vol. I, 10). The “constructivistic-positivist superstition” led to the emergence of the perspective that “there must be some single unlimited supreme power from which all other power is derived” (Hayek, 1982, Vol. III, 129). The conceptual error made by the western liberal tradition, then, lay “not in the belief that whatever power there is should be in the hands of the people, and that their wishes will have to be expressed by majority decisions, but in the belief that the ultimate source of this power must be unlimited, that is, the idea of sovereignty itself” (Hayek, 1982, Vol. III, 27).

The problem with the idea of popular sovereignty is that it granted unlimited power to the state, which would inevitably trend towards tyranny. Instead, sovereignty should be located within the community itself, exercised through decentralized power structures in civil society such as the market, preserving against abuses by public officials. This is a critical point because it helps to explain why Hayek and the neoliberals took issue with the turn to philosophical radicalism and parliamentary sovereignty at the beginning of the nineteenth century.

Hayek believed modern parliament to be the “root of evil,” since it grants formal legal and political sovereignty to a collective body to render decisions on behalf of the body politic (Hayek, 1973, 10). The conferral of sovereignty upon the legislature predisposed the state to privileging the interests of the “conglomerate of pressure groups whose support the government must buy by the grant of special benefits” (Hayek, 1982, Vol. III, 129). This demand to continually satisfy particular interests at the expense of the universal interest, results in a circumstance in which “a majority capable of governing can maintain itself only by trying to remove all sources of discontent of any supporter,” thus driving it to eventually “take control of all spheres of life” (Hayek, 1982, Vol. III, 138).

Granting a legislative assembly unlimited power, Hayek argued, was akin to “leaving the cat in charge of the cream-jug—there soon won’t be any, at least no law in the sense in which it limits the discretionary powers of government” (Hayek, 1982, vol. III, 31). “Permanent limits” should be placed on the coercive authority of government intervention in the market, beyond which “even the democratically-elected governmental assembly could not overstep” (Hayek, 1973, 21).

An ideal legislature would be stripped of its sovereignty as the ultimate source of authority and required to function within a framework of limited technocratic power.

In place of a sovereign parliament, Hayek suggested radical reforms in which power would be divided between a Legislative Assembly, responsible for the mediation and evolution of the rules of just conduct, and a Governmental Assembly, which would provide for health and safety, while creating the conditions necessary for market relations. The legislative body would function as a common law judge might, gradually redefining the just rules of conduct in accord with tradition and custom subject to the limitations of the spontaneously evolved general rules of conduct.

In *Economic Freedom and Representative Government*, Hayek (1973, 10) pointed to Locke's model of limited government within a framework of market relations as a model as to how a legislature ought to function:

“John Locke made it very clear that in a free state even the power of the legislative body should be limited in a definite manner, namely to the passing of laws in the specific sense of general rules of just conduct equally applicable to all citizens. That all coercion would be legitimate only if it meant the application of general rules of law in this sense became the basic principle of liberalism.”

Under the Hayekian model, parliament's role would be returned to the functions established by John Locke's conception of a supreme, but not sovereign legislature. Parliament should be “not all comprehensive,” but rather “confined to restraining both organized government and private persons and organizations by the enforcement of the general rules of conduct” (Hayek, 1982, pt. III, 135). Its authority should be constrained by the establishment of “long run rules which nobody has the power to alter or abrogate in the service of particular ends” (Hayek, 1982, Vol. III, 129).

The problem with contemporary liberalism, then, was primarily a political and institutional one. The nature of the sovereign parliament established an institutional imperative for legislators to continually satisfy the needs of those interests upon whom they depend for their support. Legislators are “forced” to make use of their discretionary powers “to favour particular groups on whose swing-vote their powers depend” (Hayek, 1982, Vol. III, 139).

Regardless as to whether the legislators are “angels or profoundly convinced of the supreme value of personal freedom,” the incentive structure of parliamentary democracy causes the legislator to assume the view that “they can

obtain power to do any good only if they commit themselves to secure special benefits for various groups” (Hayek, 1982, Vol. III, 135). In this way, a sovereign parliament was “the main cause of a progressive and accelerating increase of the power and the weight of the administrative machine” (Hayek, 1982, Vol. III, 138).

Modern politics became a “tug-of-war for shares in the economic pie” that makes good government impossible to realize (Hayek, 1982, Vol. III, 150). Constitutional reform designed to strip parliament of its sovereignty, could achieve the “dethronement of politics” from the operation of government, reorienting political concerns towards more worthwhile endeavours such as regulating the market and laying down the rules of conduct, while making “all socialist measures for redistribution impossible” (Hayek, 1982, Vol. III, 149-150).

Indeed, Hayek preferred a liberal dictatorship committed to extending the principles of the market to a representative democracy with a sovereign parliament devoted to social justice. Though Hayek (as cited by Caldwell & Montes, 2015) admitted there were “major dangers” with dictatorships, he argued there were circumstances in which they were justified (49). He suggested they could be necessary in some cases during a “transitional period” to a liberal democratic market-based order (Hayek as cited by Caldwell & Montes, 2015, 49). In an interview with the press while visiting Chile in 1981, Hayek (as cited by Caldwell & Montes, 2015, 44) said:

“Sometimes it is necessary for a country to have, for a time, some form of dictatorial power. As you will understand, it is possible for a dictator to govern in a liberal way. And it is also possible for a democracy to govern with a total lack of liberalism. I personally prefer a liberal dictator to a democratic government lacking liberalism.”

Though dictatorships should not be a long-term solution, they can serve to stabilize regimes while the conditions necessary for market relations are cultivated.

Hayek’s chief concern was not ensuring democracy, but rather establishing the conditions necessary to allow for the fragmented wisdom of individual transactions in the market to serve as the foundation of government in a society. While liberty required “a certain degree of democracy” Hayek viewed it as incompatible with “the existence of a representative legislative assembly with all-embracing powers” (Hayek as cited by Caldwell & Montes, 2015, 47).

### **Brexit and the Organic Crisis of the British State**

It is generally accepted that neoliberalism has been established as the dominant political, economic, and social system over the course of the last several decades (Fraser, 2019). In the U.K., the beginning of the neoliberal period can be traced back to the Thatcher era in the 1980s when the state began to pursue policies to actively undermine collective bargaining rights, privatize and cut social services, deregulate industry and finance, as well as the expand the carceral state. Because neoliberalism is fundamentally about the “privileging of corporate power” at the expense of the interests of the working class, reorienting the activities of the state toward creating the conditions necessary for market rule as opposed to cultivating social well-being, it struggles to secure the implementation of its ideas when they are inevitably met with popular resistance (Bruff, 2014, 365). In a study of the politics of Thatcherism, Gamble (1994) argued that this was achieved during the early neoliberal phase by ensuring the state was both “rolled back and rolled forward,” dismantling the Keynesian welfare state apparatus, while at the same time addressing the attendant increase in social disorder by expanding the carceral and repressive state apparatuses (28). Neoliberalism achieved complete hegemony in the U.K. during the Blair era in the late 1990s and early 2000s when the Labour Party embraced the logic of the “Third Way” (Giddens, 2013).

The rise of the Third Way led to the “demise of socialism as a theory of economic management,” and the rise of competitive market rationalism as the hegemonic paradigm (Giddens, 2013, 29). Although this new brand of politics acknowledged the potential consequences of globalization, it also recognized that “protectionism is neither sensible nor desirable” and that the state must adjust to the realities brought about of an age of international economic competition (Giddens, 2013, 37). In short, it claims that there are no longer any realistic alternatives to neoliberal capitalism, reducing political discourse to conversations about “how far, and in what ways, capitalism should be governed and regulated” (Giddens, 2013, 29).

Although the rise of the Third Way strengthened neoliberalism’s position as the dominant social and political system, by the end of the 2000s, the expression of many of neoliberalism’s economic contradictions had begun to weaken its hegemony. The period following the Great Recession of 2008-09, a crisis that was largely of neoliberalism’s own making, led some observers to predict neoliberalism’s demise. Instead, neoliberalism emerged “more politically

powerful than ever” (Crouch, 2011, iix). Rather than utilizing the crisis to dismantle neoliberalism, governments around Europe responded with even deeper austerity measures than had been witnessed prior to the crisis. The result has been a “strange non-death” for neoliberalism, as it has reasserted its hegemony, while grappling with multiple crises of its own making (Crouch, 2011, viii). The political morbidity of the present moment has resulted in a situation in which “actually existing neoliberalism continues to run on autopilot, as a default option with no positive legitimacy persists simply because there appears to be no viable alternative” (Kostko, 2020, p. 461).

Rather than fade from existence, neoliberalism has sought to consolidate its hegemony through “mutations,” or changes to its “genetic code” in order to incorporate different, sometimes nationalist or xenophobic forms, into its logical schemes to retain its legitimacy (Callison and Manfredi, 2020, 3). “Mutant neoliberalism” subscribes to the view that mutants are “new life forms” that have the capacity to shift forms and survive within challenging and rapidly evolving environments (Callison and Manfredi, 2020, 4). Neoliberalism is “not on its deathbed but is instead splintering and mutating to survive in changing circumstances” (Callison and Manfredi, 2020, 26).

Bruff (2014) has argued that for it to survive, neoliberalism has increasingly mutated towards authoritarian forms of institutional governance that do not depend upon appeals to popular sovereignty to justify its hegemony. He contended we have entered a period of “authoritarian neoliberalism” in which the state has been reorganized “into a less democratic entity through constitutional and legal changes that seek to insulate it from social and political conflict” (Bruff, 2014, 113). It has involved the “loss or weakening” of deliberative forums designed to foster social compromise (Bruff, 2014, 115). The result has been the application of “more coercive neoliberalization processes” that are made necessary by the neoliberalism’s inability to acquire the legitimate support necessary for conventional approaches to government (Bruff, 2014, 115).

Swyngedouw (2019) has insisted that autocratic approaches to governance have been “instrumental in forging the tumultuous transformations that fall under the generic name of neoliberalization” (270). The emergence of more authoritarian forms of governance has resulted from a weakening of the collective, as society has been increasingly divided between the idea of “an undivided People” united by their commitment to a market order and traditional social values (Swyngedouw, 2019, 270). Those same individuals who were the architects of the process of neoliberalization have been reorganizing the state for

many years to make it less democratic, and more respondent to the whims of private enterprise.

The Brexit crisis in the U.K., exemplifies the interconnections between neoliberalism's legitimization crisis and the recent embrace by right-wing parties of a nativist and authoritarian brand of politics. Jessop argued that Brexit was chiefly a "symptom of a continuing organic crisis of the British state and society" (Jessop, 2017, 133). The decision to Leave the E.U. did not resolve the crisis created by neoliberalism, as some in the Leave campaign had promised, but merely reproduced it in different ways through the promotion of a reactionary politics of representation. Virdee and McGeever (2018) argued that the case for Brexit was advanced by the merging of two threads. First, a sense of "imperial longing to restore Britain's place in the world as *primus inter pares*," while at the same time erasing the colonial legacy of racial subjugation (Virdee & McGeever, 2018, 1802). Second, this converged with the legacy of Thatcherism, which has resulted in widely shared experiences of "downward mobility, alongside the persistence of class injuries" that have contributed to the production of "a politics of nationalist resentment" (Virdee & McGeever, 2018, 1804).

It also produced a "powerful narrative" that those who had suffered most from globalization were a distinct social group called the "white working class" who shared common objectives and functioned as "a collective social force" (Virdee & McGeever, 2018, 1814). By way of this kind of "pseudo-biology," immigrants were classified as "bearers of alien customs as practice," placing them "beyond the boundary of what it meant to be British" (Virdee & McGeever, 2018, 1808). In a series of interviews with Leave voters, Patel and Connelly (2019) affirmed this view, finding that they commonly "framed their concerns about immigration as a 'legitimate' response to a victimized whiteness" (968).

In this way, the notion of the People in the British context has taken on both an economic and an ethno-nationalist collective identity of shared suffering at the hands of a cultural elite that imposes multicultural policies upon them, while at the same time condescending to them for their failure to embrace cosmopolitanism. The willingness of the Leave advocates to amplify this feeling of cultural alienation and to conflate it with declining material conditions allowed them to cultivate the notion that they were defending a traditional—albeit largely imagined and sanitized— notion of "Englishness." It also prepared the ground for the rise of a countermajoritarian, authoritarian politics.

### **Brexit, Parliamentary Sovereignty, and “the People”**

As he ascended to the role of prime minister in the summer of 2019, Boris Johnson stepped into the political vacuum created by this crisis. He also had to confront the political challenges associated with the inability of his predecessor to arrive at an acceptable withdrawal deal with E.U. negotiators after three years of effort. Although it was the executive’s responsibility to negotiate a deal, the government was required to have any withdrawal agreement ratified by parliament before a negotiated agreement could be implemented. The government took an uncompromising position, making the case that “Brexit means Brexit,” and that “no deal would be better than a bad deal,” increasing the likelihood that the U.K. would exit the E.U. without a withdrawal agreement in place (Jessop, 2018, 1740).

Given that both the opposition parties as well as the governing Conservative Party itself were divided among the variegated interests at stake in any potential withdrawal agreement, there existed no obvious path for passing an agreement on Johnson’s terms before the mostly artificial October 31, 2019 deadline. Recognizing that there were few good options available to him through conventional channels, the prime minister employed a highly divisive populist rhetoric to set up a game of brinksmanship with parliament.

In early September 2019, out of fear that the prime minister might seek a no-deal exit from the E.U., the House passed a programming motion with considerable support from Conservative backbenchers, to allow parliament to wrest control of house scheduling from the government. Having done so, parliament subsequently passed a bill requiring the prime minister to ask for an extension from the E.U. to avoid a no-deal scenario. To ensure parliament could not put further restrictions on the executive’s leverage to negotiate with the E.U., the prime minister requested that the Queen prorogue parliament for a period of five weeks at the height of the Brexit debate. Although the government justified its decision as a routine motion to refresh the legislative agenda, the opposition accused it of attempting to shut down parliament at a moment of national crisis to evade its capacity to restrict the prime minister in his negotiations with the E.U.

As the U.K. moved towards the Brexit deadline, the House of Commons became the primary site for this struggle. A battle over control of the machinery of parliament and the right to exercise formal political authority became central to the E.U. withdrawal process. The prime minister was forced to contend with a representative parliament that had to account for various competing interests in different parts of the country that were not necessarily consistent with the

government's 'one size fits all' approach to the interpretation of the referendum results.

The government's approach relied upon a dual strategy. First, the Conservatives constructed the perception that parliamentary debate and process were superfluous and opposed to the 'real' business of governing. The government framed the opposition as representing the interests of the cultural and political elite, utilizing parliamentary institutions as instruments to obstruct the will of the People. The Johnson government sought to make the case that parliament should "move aside and give the people a say," by standing down from their objections and allowing a Brexit deal negotiated by the executive to pass (Johnson, *Hansard*, 2019, Sep. 25). The house was "gridlocked" and "paralyzed," not from several decades of neoliberal policies, but because "parliament does not want to honour its promises to respect the referendum" (Johnson, *Hansard*, 2019, Sep. 25). The prime minister claimed that the opposition parties were deliberately stalling on the passage of a deal stop the E.U. withdrawal from happening at all and overturning the referendum result.

For Johnson (2019), "best way to shut down democracy in this country" was to "fail to deliver on the will of the 17.4 million people who voted to leave" (*Hansard*, Sep. 25). The opposition members merely sought to "dither and delay" because "all they want to do is procrastinate. They do not want to deliver Brexit on 31 October, 31 November or even on 31 January" (Johnson, *Hansard*, 2019, Sep. 25; Oct. 29). The prime minister said,

"We are all like Charlie Brown endlessly running up to kick the ball, only to have Parliament whisk it away yet again, only to find that Parliament is willing to go on delaying and delaying, to the end of January, to February and beyond" (Johnson, *Hansard*, Oct. 28).

Failing to pass Brexit would allow "the angst and uncertainty felt by millions of people and businesses across the country" to be indefinitely prolonged (Johnson, *Hansard*, 2019, Oct. 28). Johnson (2019) claimed that "the electorate are being held captive by this zombie parliament and this zombie opposition," costing the country more than £1 billion a month in economic activity (*Hansard*, Sep. 25).

In tandem with this approach, the Conservatives also sought to present their political opponents as irrational, and obstructive to the actual interests of the country. The prime minister's opponents were not merely political adversaries

with reasonable policy differences, but enemies of the economic and social interests of the People. The opposition parties, Johnson argued, are “like candle-makers at the dawn of the electric lightbulb,” in that they harboured a “terrible sense they are about to lose their market” (Johnson as cited by Mason, 2019, Nov. 6).

The prime minister told the Commons that the official opposition Labour Party risked “economic catastrophe” that would threaten the stability of the economy through renationalization of the private sector (Johnson, *Hansard*, 2019, Oct. 30). He noted that he believed “free markets and enterprise and the wealth-creating sector of the economy in a way that causes a shadow of Transylvanian horror to pass over the semi-communist faces of the opposition front bench” (Johnson, *Hansard*, 2019, Oct. 29).

Second, the government reframed the idea of sovereignty as located in the fictional idea of the People, represented by the Brexit referendum result. On this view, parliament was using its unrestrained sovereignty to seize authority from the People and to block their will from being actualized because it differed from their own conception of the world. Government House Leader Jacob Rees-Mogg (2019) argued that “sovereignty comes from the people to parliament. It does not come to parliament out of a void” (Rees-Mogg, *Hansard*, 2019, Sep. 3). The People, in the instance of the Brexit debate are the “17.4 million people who voted to leave the European Union” (Rees-Mogg, *Hansard*, 2019, Sep. 25). In other words, the notion of the People was not associated with parliamentary representation, but rather with the results of a close referendum conducted three years earlier.

For Government House Leader Jacob Rees-Mogg (2019), the executive’s role ought to be to “protect the people from arrogant power grabs” designed to overrule the will of the People (*Hansard*, 2019, Sep. 3). This populist rhetoric frames the executive, under the leadership of a governing bloc who understand the ‘real’ needs of the People, as a political shell to protect the community from the constructivist design of an activist parliament. By reframing sovereignty as being vested in the People rather than in parliament, the executive can present itself as a counterforce against those legislators who would use parliamentary procedure to oppose or obstruct the will of the community.

Despite maintaining rhetorically that the actions of a sovereign parliament were contrary to the national interest in legislative debate, the government took an entirely different position in the court. In defence of prorogation, the government attempted to utilize the sovereignty of parliament as

a shield against judicial intervention, arguing that an independent parliament is constitutionally entitled to be a self-governing entity. The Supreme Court did not accept this argument, ruling that prorogation was an executive prerogative power subject to judicial oversight (R. v. The Prime Minister, 2019).

The Court determined that the prorogation was indeed unlawful, in so far as it had the effect of “frustrating or preventing the constitutional role of parliament in holding the government to account” (R. v. The Prime Minister, 2019, 20). However, the reasons it provided for arriving at its decision went to the heart of the issue of parliamentary sovereignty. In a rebuke against the government’s effort to redefine the idea of sovereignty, the Court affirmed the principle that the executive is accountable to parliament, noting that its democratic legitimacy comes from the fact that the house is the elected representative body. It determined that:

the House of Commons exists because the people have elected its members. Government is not directly elected by the people (unlike the position in some other democracies). The government exists because it has the confidence of the House of Commons” (R. v. The Prime Minister, 2019, 20).

The result was that the prorogation “prevented parliament from carrying out its constitutional role for five out of a possible eight weeks between the end of the summer recess and exit day on the 31st October” (R. v. The Prime Minister, 2019, 20).

## **Conclusion**

One of the consequences of the incapacity of the neoliberalized state apparatus to manage the various contradictions and competing interests at the heart of the Brexit debate was to displace the organic crisis of the British state as a crisis internal to parliament. Recognizing the challenges to the actualization of a withdrawal agreement, the Conservative government turned to a form of anti-parliamentary populism that mobilized foundational neoliberal arguments about the role of a sovereign parliament in support of their agenda. This new form of populism has attempted to assign blame to parliament for the political intransigence that followed the 2016 E.U. withdrawal referendum result.

Drawing upon the idea that politics should be dethroned from the process of legislating, the Conservative government presented parliamentary

scrutiny and deliberation as superfluous activities that distracted public officials from the important task of governing. The incentive structure of a sovereign parliament meant legislators were perpetually inclined to privilege the elite interest groups whose support they required for re-election. Parliamentary governance was thus constantly saturated in politics, as a forum unproductive, rent-seeking groups used to reward their benefactors and promote their political agendas. Viewed this way, parliamentary institutions *themselves* can be understood as counterintuitive to the national interest, since they become instruments of those special interests who would seek to undermine it. Debates, committee hearings, and efforts to amend and improve legislation come to appear as though they are efforts to obstruct the capacity of the executive to actualize an E.U. withdrawal deal. In this way, the executive serves as a “check” against an unrestrained legislature that would impose its own vision of the world if it were permitted to do so.

The crisis of the modern liberal state was not simply an issue of replacing good legislators with bad ones. Rather, the problem was the sovereign parliament itself, which allows for the perpetuation of rent-seeking at the expense of abstract market relations by the very nature of its incentive structure. The only way to resolve this issue internal to the existing constitutional order was to allow the executive to protect the interests of the People from the reach of an unrestrained parliament by placing restrictions upon it. Doing so, however, requires embracing a form of constitutionalism that is closer in its approach to the limited democracy of classical liberalism than the representative liberal reforms of the nineteenth and twentieth centuries which held that good government could only be obtained by subjecting rulers to constant public scrutiny.

In this way, the rise of right populism does not reflect the rise of an *illiberalism* so much as it marks a return to a classical form of liberal constitutionalism. Its logic is much closer to earlier forms of liberalism, which were established to provide security for pre-existing natural rights, while rejecting the intervention of rational design. Hayekian logic, the long shadow of which has become increasingly apparent in contemporary efforts by neoliberal politicians to undermine parliamentary accountability, is grounded in an epistemology that is far closer to the “old” Lockean liberalism, than the “new” liberalism of Bentham.

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