

Britain's democratic crisis: how do we fix it?

Defending and deepening
democracy in the UK and EU

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Introduction

The case for staying in the EU is all about democracy. It opens up new ways in which we can participate in and influence the decisions that affect our lives. If Brexit happens, we will be extremely vulnerable to decisions, events, regulations, over which we have no control – the global market, other countries' trading rules, climate change, data surveillance, and the global corporations. Brexit will also empower the far right, who have no interest in redistributing power.

This pamphlet is about the need for Labour to make the defence and deepening of democracy the central political issue, and show that it is the party that has the potential to empower the citizens of the whole of the United Kingdom and to make it possible for everyone – not just a few rich and powerful English Brexiters – to take back control.

Context

Britain's dangerous lurch to authoritarianism and nationalism

Boris Johnson's decision to prorogue Parliament brings the issue of democracy to the absolute centre of the debate on Brexit. The seriousness of this situation is underlined by Johnson's latest suggestion that he might refuse to observe the 'no deal' legislation successfully passed by Parliament prior to its shutdown. Britain now faces a real possibility of creeping authoritarianism and populism. British democracy always had many flaws, but the fact remains that long-accepted democratic norms are now being openly challenged. We are facing a 'Trumpist' moment in world politics that is putting strain on established institutions, and pulling societies in Europe and globally dangerously to the populist right.

Across Europe, we have seen this tendency towards *democratic backsliding* and *executive takeover*. These experiences, notably in Hungary and Poland but also, to a degree, in Austria and Italy, provide a stark warning of what is at stake here in Britain. Democratic backsliding refers to a situation of gradual erosion of liberal democratic principles. In Hungary and Poland, the independence of the judiciary, as well as the importance of fundamental rights for minorities, have been openly challenged by the ruling parties.

Executive takeover refers to the centralisation of power in the hands of the government (the executive) at the expense of the other arms of the state, the legislature and the judiciary. In Hungary, this has gone alongside the creation of a crony capitalist system where the government also creates corrupt networks to take control of the economy. Ominously, this process involves polarising public debate, usually on grounds of race and ethnicity, and then calculating that voters will support a government's authoritarian actions if it stops the 'other side' (usually progressives and socialists accused of wanting to increase immigration) from taking power.

Johnson's actions are a small but real step in this direction. A willingness to present the executive as champions of 'the people' against a treacherous 'Parliament' is an almost exemplary populist move.

The 'take back control' myth

During the referendum campaign, the slogan 'take back control' had huge resonance – the result could be interpreted as a howl of protest at political disempowerment. Excessive centralisation in Westminster and the huge changes wrought by globalisation and deindustrialisation across Britain, did play a role in the vote – even if there were also other factors too, like nostalgia for empire and a backlash against immigration and multiculturalism.

But what does take back control actually mean? Before the Second World War, Britain was an empire able to exert considerable influence in the world and thereby protect its autonomy of decision-making. The the 'cost' of this autonomy was paid by British imperialism's numerous victims all over the world. In the aftermath of empire, the UK was able to sustain its influence, to some extent, through its membership of the European Union, which includes other European states that had similarly seen their empires collapse. By force of circumstances they were compelled to 'do something different' in order to maintain their influence. In today's globalised, interdependent world, the European Union has provided a framework in which individual states are able to retain a degree of influence and control through pooling sovereignty.

The process of Britain attempting to leave the EU has already taught us that Brexit reduces our capacity to influence global decisions. Outside the European Union, individual states would be hugely vulnerable to global financial markets, the decisions of multinational companies, climate change or transnational organised crime. Leaving the EU would mean less control, not more control.

The rise of English nationalism

The Brexit vote, as Anthony Barnett and others have pointed out, was an English vote. Brexit is very likely to lead to the break-up of the United Kingdom. Scotland will demand a second referendum on independence and either Ireland will be united or the Troubles are likely to begin again. Yet those who favour Brexit seem unconcerned about these consequences, and this can be explained by their English nationalist stance. The Brexit vote is often attributed to the 'left behind' in areas of declining manufacturing and mining. Yet while this does account

for some for the Leave vote in England, similar areas in Scotland and Northern Ireland voted Remain. Moreover, just as important as the 'left behind' were small town or rural based middle class voters, who have experienced the loss of privilege associated with the end of empire and the redistribution of wealth, as well as a sense of self-pity about the world's failure to acknowledge Britain's 'singularity' in the Second World War, as eloquently described by Fintan O'Toole.

Another important reason for the rise of English nationalism is the lack of political devolution in England. Those who voted for Brexit felt unrepresented in either Westminster or Brussels.

Neoliberalism and crony capitalism

Neoliberalism has involved in a big increase in inequality, a rise of finance relative to manufacturing and a contracting-out culture of government. As in other countries, creeping authoritarianism, populism, nationalism and racism are often associated with the rise of a new rich, the '1 percent', who make money through the privatisation of state assets, through dodgy deals especially arms sales and trading in oil, through financial manipulation and the use of tax havens, often dangerously close to organised crime. Brexit will be a victory for this class of capitalists, allowing a bonfire of regulations, transforming Britain into a tax-free offshore island and encouraging authoritarian tendencies that facilitate corruption.

Democratifying the UK

Britain's current crisis has exposed major cracks in our democratic system. In his famous book *The English Constitution*, Walter Bagehot described the 'efficient secret' of the UK constitution as lying in the 'close union, the nearly complete fusion, of the executive and legislative powers'. But in practice this gives the executive a great deal of power at the expense of parliament.

We have an incredibly centralised and archaic political system that gives the prime minister, in particular, considerable power. Parliament has asserted itself during the current crisis – successfully using the principle of parliamentary sovereignty to challenge the Brexiters seeking a disastrous 'no deal' exit from the European Union. But they've only been able to do this because the government does not command a majority in parliament – and the governing party, the Tories, have split over how to deal with Brexit.

Even then – despite the government not having an effective parliamentary majority – Brexit has revealed how much power the executive holds in the UK system. A future government with a larger majority could slide the country further towards political authoritarianism. What's more, the electoral system used for Westminster, unlike in Wales, Scotland or London, does not deliver a parliament that is proportional to how the country actually votes. So we could easily slide towards authoritarianism when only a minority of voters had ever backed the governing party.

Fixing our democratic system means decentralising power to communities and regions all over the UK. It must include stronger protections for fundamental social and political rights.

Key ideas for a new system

► **Constitutional Convention.** The democratic renewal of Britain should not just be declared from above. We must involve the peoples of the UK in a participatory process of deliberation and reflection, extending to every one of our communities. A constitutional convention can bring the peoples of the UK together to rebuild our politics and overcome our many divisions.

Whatever happened to parliamentary sovereignty?

The Prime Minister's decision to prorogue parliament has proved to be a wake up call about the reality of the UK's political system. Supporters of Brexit stressed taking back control, by which many Leavers meant 'taking back control of our own laws', restoring parliamentary sovereignty. But if a Brexiteer prime minister can close down parliament without the agreement of MPs, what is parliamentary sovereignty?

Over a million protesters who signed a petition against the closing of parliament – and who, having reached 100,000 should, by supposed parliamentary procedures, have triggered a parliamentary debate on the subject of their petition i.e. prorogation – instead received an email informing them that 'Prorogation is a prerogative Act of the Crown, exercised on the advice of Ministers to bring about the end of the parliamentary session.' In other words: mind your own business; what the Prime Minister does is not your business. The email continues, 'The royal prerogative is the term used to describe the powers held by Government Ministers, either in their own right or through the advice they provide to the Queen which she is constitutionally bound to follow.'

So we are not, after all, a 'parliamentary democracy'. The existence of the royal prerogative makes the UK instead a 'constitutional monarchy'. The problem here, for democracy, is not that the Queen has any power. She does not. It is that these royal powers, left over from the aftermath of the 17th century civil war, enable the government to act without parliament for a number of important purposes: to make and unmake treaties, to declare war and to deploy the army.

- ▶ **New constitution.** We need stronger protections on democracy and human rights. But a new constitution should not just be about such individual rights: we must be forward-looking and transformative. Stronger social and employment rights – including the right to access free public services and to take strike action – must also be included in our constitutional debate.
- ▶ **Fixing our politics.** We have a long-overdue need to make our politics more representative of our country. That means reforming the House of Lords by ending the system of unelected peers, and finally implementing the Jenkins Report (1998), which proposed a proportional electoral system for Westminster.
- ▶ **Power to the people.** We must give the regions of England more power over the numerous decisions that affect their lives. We've seen in practice what devolution can do for Scotland, Wales, London and Manchester and we must spread its benefits - not in the haphazard way that we've seen so far, but as part of a new federal settlement for a politics all can share in.

Democratifying the EU

The European Union is often treated as a remote monolith over which we have no control. In fact it is an extremely complicated interrelated set of institutions, which often produces inertia and gridlock, but which nevertheless include openings in which citizens can participate and influence decisions. The institutions include the European Council (composed of national heads of state), the Council of the European Union (ministers from member states), the European Commission (which acts as the secretariat and where commissioners are appointed by member states), the European Parliament (directly elected), the European Court of Justice, and the European Central Bank. Most laws are adopted through co-decision by the European Council and the European Parliament.

The complexity and sometimes absurdity of the decision-making process was illustrated by this year's appointment of the President of the Commission; despite the informal decision to adopt what was known as the *spitzenkandidat* system, whereby the leader of the largest party is the candidate for President, a completely different nominee, Ursula Van Der Leyen, admittedly from the largest party, was put forward by the Council and approved by the Parliament through a cumbersome process of twists and turns. A hugely important drawback of this cumbersome, untransparent system is the way it has proved to be vulnerable to corporate lobbying. Nevertheless, there are mechanisms for direct accountability to the citizen. These include:

► **The European Parliament.** The European Parliament can amend and approve legislation, approve appointments and is responsible for approving and overseeing the budget. For example, Julie Ward, MEP for North West England, has been able to work closely with NGOs and civil society groups to propose amendments that benefit citizens. She tabled a series of amendments to the Audiovisual Media Services Directive of 2018 aimed at protecting children from harm. These include amendments to curtail the advertising of unhealthy foods, amendments designed to limit product placement in media content, and an amendment emphasising the importance of media literacy, which would 'aim to equip citizens with the critical thinking skills required to exercise

● **Corporate elites**

● The Brexit slogan of ‘take back control’ was originally pitched against the political and bureaucratic elites. But the biggest threats to democracy, in the UK and across Europe, are large, transnational corporations that have no loyalty to place, people or the public good and who are able to move their money to wherever they’ll maximise their profits. Such corporations have been able to capture key EU policy processes and outcomes. Transnational corporations maintain well-staffed lobby offices in Brussels, and pay lobby consultancies handsomely for their political contacts and know-how.

● There are stark imbalances when it comes to meetings between public officials and lobbyists. Business lobbyists account for 75% of the high-level lobby meetings in Brussels that are pro-actively disclosed. They enjoy privileged access to policy-makers, and in return provide policy-makers and regulators with their detailed expertise. They employ former politicians and senior officials, benefiting from their inside knowledge and contacts. And they scaremonger with threats like relocating from Europe to regimes with lower costs or fewer regulations: the threat of jeopardising thousands of jobs is a powerful bargaining ploy. When many of these elements are, together, in play, we can begin to talk of regulatory or corporate capture.

● Such capture leads to outcomes that are damaging to the public interest: corporations hiding taxes which could be used for healthcare or education; car manufacturers violating emissions laws without retribution, and so on. Corporate capture results in policies that undermine public goods such as clean air, water and energy; local, sustainable agriculture; social protection and workers’ rights.

judgment, analyse complex realities and recognise the difference between opinion and fact.’

► **The European Citizens Initiative.** This was introduced in the Lisbon Treaty. A Citizens’ Initiative has to collect over a million signatures from citizens of the EU, from at least a quarter of the countries, to be taken seriously by the Commission. Successful initiatives include the commitment to water as a public good, and the petition to stop TTIP (the Transatlantic Trade and Investment Partnership), a proposed neoliberal US-EU trade agreement that would have led to a big lowering of environmental and social standards, including allowing the notorious chlorinated chicken. The anti-TTIP Initiative collected over 3 million signatures and TTIP was eventually abandoned by the Commission.

► **National parliaments.** Only 13% of our laws are decided jointly with the European Union. The remaining 87% of laws are purely national. Also, contrary to the public impression, the UK has been hugely influential in shaping EU rules and regulations. But new initiatives or appointments of commissioners have been largely proposed by the government without any consultation with parliament. The lack of transparency, and the impression that EU policies are adopted without public scrutiny, is in part a consequence of this failure to debate European issues in parliament, in contrast to many other member states.

Parliament has to debate treaties which have an effect in domestic law, but governments have been able to use the prerogative to avoid debate. This limits the powers of Parliament’s European Scrutiny Committee. For example, in the case of CETA – the trade agreement with Canada that could have affected food regulations in the UK and facilitated the privatisation of UK public services – the government avoided a parliamentary debate until after it had been signed and could not be renegotiated.

In other European countries, however, parliamentary scrutiny is much more effective. In the case of CETA, scrutiny and then opposition by the regional government of Wallonia in Belgium led the federal government of Belgium to oppose the Treaty.

One of the obstacles to citizens' participation is the lack of political engagement at a European level, especially in the UK. People do not make use of the mechanisms that exist either because they do not know about them or because they are more preoccupied with national issues. In particular, there is rather little interest in the European Parliament. European elections tended to be the expression of national preoccupations, proxies for national elections, and the centre parties dominated the Parliament.

But the weakness of political engagement is beginning to change, in part because of Brexit. On the one hand, right-wing eurosceptic populist parties in other European countries have abandoned their stances on leaving the European Union and instead have chosen to compete to control the European institutions. On the other hand, progressive parties are finding it necessary to mobilise to counter the right-wing challenge.

The 2019 elections can be regarded as the first elections that were about the future of Europe. Turnout was over 50%, higher than for over two decades. An analysis of party manifestos shows that the centre consensus no longer exists and that a progressive vision is beginning to take shape (*The Dawn of a Europe of Many Visions*, Cooper, Dunin-Wasowicz, Milanese, 2019). The Party of European Socialists had a manifesto much influenced by the 2017 Labour manifesto, calling for a Europe of the Many, an end to austerity and neoliberalism, a green transition and a feminist Europe.

Already the Commission has shown that is increasingly ready to stand up to big corporations. Google has been fined billions of euros for failing to pay sufficient tax; likewise Apple and Amazon have also been challenged on tax and compliance with anti-trust legislation. Facebook has is involved in numerous disputes with the Commission on EU rules, especially issues relating to data and privacy.

A Labour government could play a central role in mobilising political engagement if it were to work with sister parties and the Europe-wide labour movement to reform the EU to take back control. It would be particularly important and regulate corporations – something that no single nation state can do alone.

The abolition of roaming charges

You may have noticed in the last couple of years that when you travel outside the UK in Europe, you receive a text from your mobile phone company announcing that they will not charge you for roaming. This is not some new marketing gimmick or a gift from the company. It is the consequence of an EU decision to abolish roaming charges within the European Economic Area from 15 June 2017.

This decision was brought about by grassroots campaigning – a Fair Roaming Campaign that has been underway since 2010 and a European Citizens Initiative called the Single Communication Tariff Act or ‘One Single Tariff’, registered in 2012 by some graduate students studying in Paris. The Initiative collected over a million signatures.

The abolition of roaming charges greatly facilitates communication across Europe. It now costs the same when you use your mobile phone abroad, at least in EEA countries same as at home and it costs the same to make calls within EEA countries as within the UK. It also reduces excess mobile phone company profits.

Proposals for the manifesto

The Brexiters argue that respecting the referendum is respecting democracy. Yet democracy is much more than this. It is about debate and discussion, about being able to change your mind, and about checks and balances within a framework of the rule of law. There is likely to be a general election soon. Labour needs to campaign on a platform of defending and extending democracy. This would include:

1) Labour has to take an **unambiguous Remain position** and explain why this is the only way to take back control. It has to campaign for a second referendum and commit to a Remain position in the referendum. There is no 'Labour Brexit' that can meet Labour's six tests, and to propose a Labour deal alongside Remain gives a strange, fudged message.

2) In order to take democratic control over the UK's relations to Europe, we need first to **eliminate the residual powers of the monarch** – exercised as they are by ministers without automatic parliamentary accountability – and enable a reformed parliament, with an elected second chamber and a proportional electoral system for members of both parliaments. MPs should also be able to set a mandate for the government, outlining 'red lines' and priorities. The government must return to parliament if they want to change this mandate. This gives clear consent from parliament for the trade negotiations, and is similar to processes in Denmark and other European countries, where parliament sets a mandate for its representatives to the EU.

3) Labour needs to commit a **Constitutional Convention** that would put forward proposals for devolution, for reform of the House of Lords, and for a reformed electoral system.

4) Labour needs to commit to the **democratisation of the EU**. Labour needs to join with sister parties across Europe to push for a programme of democratic reform that would make possible a reversal of neoliberal policies. Such a programme would simplify decision-making procedures,

so that European citizens could participate and understand what is going on, democratise the key appointments such as the President of the Commission and the Commissioners, strengthen the role of European and national parliaments, maximise subsidiarity – the principle that decisions should be taken as close as possible to the citizen – as well as the role of regions and municipalities in decision-making, and introduce other democratic mechanisms such as workplace democracy or participatory budgeting.

5) Moreover, as part of this democratisation of the EU, a Labour government could work with sister parties and the Europe-wide labour movement to **reform the EU to take back control and regulate the corporations** – something that no single nation state can do alone. This could involve:

- ▶ End the privileged access of corporate interests in the European Union.
- ▶ Re-democratise the policy input process. To break the structural imbalance in stakeholder inputs to policy-making, the institutions need to go beyond a simple ‘open doors’ policy (i.e. just accepting invitation requests received), which benefits the professional and well-resourced lobbying operations that have offices in Brussels or the ability to travel there. Instead, the institutions should seek novel ways to gain input from citizens, SMEs and other, currently under-represented, interest groups, at different levels.
- ▶ Robust ethics and conflicts of interest rules for politicians and officials, to prevent them from having professional or financial interests in the industries they are tasked with regulating. These rules should govern financial interests, second jobs, ‘revolving doors’, and receiving gifts and hospitality, among other areas. But rules that are not enforced are an empty gesture: it is equally vital that these ethics rules be accompanied by independent monitoring, oversight, and enforcement. Putting an end to self-regulation is crucial, as too often politicians and officials make their own rules and then act as judge and jury in enforcing them.

- ▶ Enhance democratic control through greater transparency and access to information. To enable citizens and civil society to see how and by whom laws are made, and to hold their law-makers to account, transparency tools are very important, including:
 - ▶ Full EU lobby transparency, which requires a legally-binding lobby register and pro-active transparency of lobby meetings and/or of who has influence on draft laws.
 - ▶ A legislative footprint for all EU legislative proposals.
 - ▶ Lobby transparency is also needed at the national level, as well as greater transparency around member states' actions at the EU level. The permanent representations of member states (i.e. their Brussels diplomats), and the rotating national presidencies of the Council, must be included in a mandatory transparency register, which provides for full lobby transparency.
 - ▶ Comprehensive freedom of information rules, which enable outsiders to follow the policy-making process in a detailed and timely way and to assess how a proposal is being influenced, and protection of whistleblowers and investigative reporters.

- ▶ When there is an irreconcilable conflict between an industry's interests and the public interest, creating a firewall between regulator and regulated should be considered. This was the conclusion of the UN World Health Organisation when it put forward the Framework Convention on Tobacco Control. The convention's guidelines require decision-makers to restrict contacts with the tobacco industry lobby to "only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products". This principle may need to be applied in other policy areas where the public interest is fundamentally contrary to the interest of the regulated industry. There have, for example, been calls for a conflict of interest policy in the UN climate talks, to reduce the risk of big polluters blocking measures needed to prevent catastrophic climate change. This was supported by the European Parliament in a 2017 resolution, and is an official agenda item at the intersessional meetings of the UN Framework Convention on Climate Change, with growing support from numerous governments.

► Get money out of politics, particularly at the national level. While the US is often seen as the pinnacle of political party funding problems, there are also concerns across EU countries about undue influence. Recently, fallout from the Brexit referendum has highlighted the flaws in the UK's party and political funding, whilst in Germany big business can donate to parties directly. Funding limits should be imposed, with transparency requirements on big donors, in a timely manner, as well as limits on anonymous donations, and mandatory and timely transparency about political advertising, including on social media.

► Strengthen the independent capacity of the EU institutions to regulate corporate interests. Last but not least, the Commission, which as the EU's executive body has sole responsibility for producing legislative proposals, has a staff of only 30,000. It turns to corporate interests for 'expertise' and 'advice', which kick-starts corporate lobbying at the earliest stages, and privileges business' interests. More expertise inside the institutions is one possible way to reduce dependence on external expertise, as is drawing on the inside knowledge of workers and communities who have no financial interests in policy outcomes, only public outcome interest expertise. It is abundantly clear that the Commission needs to start a process to minimise the risk that those with a financial stake in an issue dominate policy deliberation and decision-making.

► Curb the political power of big business. The EU is capable of stepping up to be the space for this change. We have seen, for example, instances where enforcement of competition law has led the EU to take on some of the biggest multinationals in the world. And the EU can lead in other ways, including by reforming itself to be closer to citizens, and being more wary of big business lobbying. The EU can play a role that a standalone member state would struggle with, and by doing so, can seek to become a better embodiment of its own democratic values.

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