

Brexit and the Power of Parliament

Workshop, 9 July 2018, Palace of Westminster

The role of the British Parliament continues to be at the centre of the Brexit debate in the United Kingdom. On Monday 9 July 2018 the Dahrendorf Forum hosted a workshop on ‘Brexit and the Power of Parliament’ at the Palace of Westminster aimed at understanding Parliament’s complex role in the Brexit process as well as the effects of British withdrawal itself on the legislative process and parliamentary authority. Participants included MPs, peers, academics, think-tankers, and parliamentary clerks from Westminster and the European Parliament. The discussion was held under Chatham House rules. As such, this report briefly summarises the key findings and areas of discussion from the event without attributing comments to any named individual. Drawing upon the remarks made, this brief makes the following five observations:

1. Parliamentary authority is undermined by the frequent invocations—on both sides of the Brexit debate—of the supposed ‘will of the people’, which can have meaning and legitimacy only if it is afforded institutional expression through Parliament.
2. Parliamentary scrutiny of EU policies and priorities will be necessary even after Brexit, since EU law will continue to play a substantial (if informal) role in British policymaking. Although the institutional form of this oversight will depend on the future relationship, maintaining a balanced range of partisan opinions will be crucial regardless.
3. The British party system will remain in flux for the foreseeable future, since the Westminster system does not lend itself easily to the establishment of new parties, and since inter-party competition remains high, irrespective of changing ideological cleavages.

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PARLIAMENTARY
AUTHORITY AFTER THE
REFERENDUM

THE PARTY POLITICS OF
BREXIT

THE VOTE ON THE
WITHDRAWAL AGREEMENT

COOPERATION BETWEEN
LEGISLATURES AFTER UK
WITHDRAWAL

4. The incentives to vote for or against the withdrawal agreement when it reaches the House of Commons are complex, since support may be understood either as a vote for the government, Brexit itself, or May's specific vision of Brexit. Political gridlock is one foreseeable outcome.

5. Inter-parliamentary collaboration and exchange between European legislatures will not be substantially affected by Brexit and should be stepped up to replace lost political and institutional ties. There are early signs that this is already happening.

PARLIAMENTARY AUTHORITY AND THE BRITISH CONSTITUTION

For some Leave supporters, the very purpose of exiting the European Union was to 'take back control' and restore the sovereignty of Parliament, which, they argued, had been undermined by the supranational

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character of EU law. And yet Parliament is often viewed as a potential impediment to Brexit, since a majority of MPs favoured Britain remaining in the EU and since it is said that Parliament would not countenance either a 'hard Brexit' or a 'no deal' outcome. Parliament's role in the process thus pits two contending sovereignties against each other: that of Parliament and that of 'the people'. Representation, however, if it is to mean anything, can only be

provided through an impartial institutional process. We should be sceptical of the invocation of the 'will of the people' (by both sides) since this ultimately undermines Parliament's authority.

Constitutionally, the UK's departure from the EU raises many questions beyond the ability of Parliament to have its say over the Brexit process. Parliamentary sovereignty, the hallmark of the Westminster model, allows for efficient government, since Parliament may legislate unconstrained on any topic as long as a majority of votes can be obtained. Additionally, Parliament is not able to bind its successors, meaning policies can be adjusted

efficiently to suit changing needs. The Brexit vote has also highlighted the trade-off between efficient government and the ability to lock in desired commitments. It will be difficult, for instance, to find ways of locking in guarantees on citizens' rights in the absence of a judicial role for the Court of Justice of the EU, while the magnitude of post-referendum changes have highlighted how significant rights and constitutional principles may be undone or amended through legislation passed with a simple majority.

PARLIAMENTARY SCRUTINY OF THE BREXIT PROCESS

Scrutiny of the Brexit process has centred on Parliament's committee system, although the House of Commons European Scrutiny Committee is not as prestigious or prominent as its equivalents in other European countries, since it consists mostly of Eurosceptic politicians.

Reconstituting the House of Commons European Scrutiny Committee in particular will be a key task after Brexit, since the EU will continue to influence UK politics.

The opportunity to enhance the Committee's prestige within Parliament and to improve public understanding of the Committee's work should be taken. It may also prove more effective to have each ministry scrutinise its own area of expertise, and to invite foreign members of the European Parliament (EP) to attend UK scrutiny meetings on EU issues, as is currently done in many EU member states. Moreover, the partisan composition of the committee may need to be re-thought, since the new cleavages created by Brexit exacerbate existing partisan divisions and may cause gridlock.

The British Parliament has a multifaceted character, rendering attempts to understand its role in the Brexit process a complex affair. Since the Westminster system is not based on a separation of powers between the executive and the legislature, Parliament's agenda is heavily determined by the actions of the government of the day. Moreover, as a bicameral legislature with an elected lower chamber and an unelected upper chamber, Parliament cannot be assumed to act with one voice, and each chamber has unique interests, mandates, and approaches. To some, Parliament is better seen as a platform on which inter- and intra-party politics are played out, according to interests separate from concerns over institutional prerogatives. The upshot of this is that Parliament's role in the Brexit process is fundamentally dependent upon how inter- and intra-party politics play out.

THE BRITISH PARTY SYSTEM

The referendum result highlighted the extent of division between Leavers and Remainers within the British population as a whole, between the regions of the UK, and within the major political parties. Labour and the Conservatives are both divided on the issues. In the Labour Party, urban voters supported Remain while rural areas backed Leave. In the Conservative Party a somewhat similar divide exists. This means MPs returning from visits to their constituencies reflect a diversity of views. These intra-party divisions have their roots in changing patterns of partisan contestation, with the left–right divide being gradually replaced by a new fault line centred on the divide between those who believe society benefits from liberalisation and globalisation versus those who disagree.

Although Brexit dynamics differ from party dynamics, the UK's first-past-the-post (FPTP) electoral system makes political realignment more difficult, since it hinders the emergence of new parties and results in an implicit system of coalition building that takes place within established party structures rather than between parties. These conditions would augur against the renewal of the political centre ground. Indeed, the greatest threat to the government comes from the party's own backbenchers rather than the official opposition, since it is often more difficult to fight off one of one's own. This relationship has become more fraught recent years as intra-party divisions over Europe and foreign affairs have intensified conflict between party factions.

The divisions within the major parties raise fundamental questions about the ability of British politics to adjust to changing patterns of voter preference. In general the government has not handled these divisions well. Although there has been considerable emphasis on the need for 'consensus building' and for a Brexit that 'works for all', the government has so far resisted affording these ideals an institutional basis, refusing to countenance opposition representation on the negotiating team or the creation of a cross-party commission to oversee the Brexit process.

THE VOTE ON THE WITHDRAWAL AGREEMENT

The government's legislative timetable for implementing Brexit posits that the completed withdrawal agreement will be placed before Parliament in autumn 2018 along with a statement on the future relationship. Agreement is still to be reached on around 20 percent of the contents

of the interim agreement, including the most difficult issues, notably the Irish border. The agreement and the statement on future relations must be approved by the UK Parliament on the basis of commitments included by the government in the withdrawal bill, which received royal assent in June 2018.

While the withdrawal agreement will take the form of a treaty that implements the provisions of the interim withdrawal agreement, the statement on future relations will likely comprise a political statement agreed between the two sides. It is not known how detailed this statement will be. David Davis has intimated that many of the key details will be in the future agreement rather than the withdrawal agreement, given the difficulty of predicting certain elements of the future relationship. This means trust will take on an important role, since much will be unspecified at the time MPs (and MEPs) vote on the withdrawal agreement.

Ministers in the UK are divided on the contents of the withdrawal agreement. Theresa May attempted to bridge the divisions within the cabinet in her Chequers agreement, which proposed a common rulebook for goods incorporated into a treaty overseen through a joint institutional framework with binding arbitration mechanisms, accompanied by a 'mobility framework' and a 'combined customs territory'. The contentions nature of the remaining sections of the withdrawal agreement still to be negotiated has led to concerns that the withdrawal agreement may not be signed in the autumn after all, although it is likely the EU will call the UK's bluff if it threatens to walk away without signing any such agreement.

It is unclear whether or how many, Conservative MPs will defy the whip and vote against May's agreement. It is possible that Brexit-supporting Conservative MPs who are not happy with May's Chequers agreement would consider clubbing with Labour and voting against the government. Although a number of Conservative MPs voted against the government on elements of the

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withdrawal bill, there may be more restraint when it comes to the withdrawal agreement, since the alternative might be a Labour government with Jeremy Corbyn as prime minister. The Labour party formally favours a softer Brexit, including continued membership of the customs union, but has committed to vote against the government on the issue on the grounds that a Labour government would do a better job of securing British interests. Labour would also stand to benefit from the likely fall of the government in such a scenario.

If the withdrawal agreement fails to pass, this will not necessarily result in a victory for the other side. Aside from private members' bills, which are infrequently successful, bills arrive on the floor of the Commons from the government itself, and legislators may only vote to adopt or amend legislation, not initiate it. As a result, pro-Remain MPs would not be able to introduce a bill of their own. Political gridlock may be one foreseeable outcome, since Labour would support pro-Brexit Conservatives opposing May's agreement. The Conservatives, however, would rally together against any motion introduced by a subsequent Labour government.

The EP will also need to approve the withdrawal agreement. Since MEPs have been consulted on the Brexit process from day one it is likely that they will offer their consent, as they have had a number of opportunities to make known their own red lines. It would also be a blow to their interests if they were to veto the agreement. On the other hand, the EP has many other legislative issues to vote on, and may not be as ready to offer the quick support expected by the UK. Questions remain also about the timing of the vote. To allow sufficient time for the implementation of arrangements on both sides the agreement needs to be signed by December 2018. If there is political gridlock, there will be insufficient time for the EP to have meaningful scrutiny. The question is thus how long we can wait for an agreement and still ensure proper scrutiny is in place.

INTER-PARLIAMENTARY RELATIONS AFTER BREXIT

Outside of the EU framework, Parliament collaborates with other legislatures on a multilateral basis through such organisations as the Inter-Parliamentary Union, the Parliamentary Assembly of the Council of Europe, and the Commonwealth Parliamentary Association. Strong bilateral relationships also exist between a number of legislatures. These forms of cooperation need not

be affected by Brexit and may indeed become more important after Britain withdraws from the EU. The UK Parliament has considerable expertise that is valued by parliamentary colleagues around the world. Indeed, consultation with other European capitals has already increased significantly since the Brexit referendum, with frequent meetings on sector-specific topics and on Brexit itself. It is also helpful for UK MPs to visit other European legislatures to understand how they hold their governments accountable.

Horizontal cooperation within the EU takes place through the Conference of Parliamentary Committees for Union Affairs of Parliaments in the EU (COSAC) which, since the 1999 Treaty of Amsterdam, has a recognised role in the EU decision-making process. The organisation holds biannual meetings which are deemed highly useful by participants, with UK representatives in particular valued highly for their expertise by their compatriots. Continued participation in COSAC is not certain, since EU membership is formally a prerequisite. Although Norway sends representatives to meetings, its status is not straightforward, requiring COSAC to accept a letter of request prior to each meeting. Whether the UK is afforded a similar position will be dependent on informal norms and personal contacts, and will in any case confer only observer status.

Vertical cooperation also takes place between the British Parliament and the EP through the representations between both legislatures and through the 'early warning system' (EWS) mechanisms introduced by the 2009 Lisbon Treaty. British participation in the EP's legislative activities will cease upon its withdrawal on 29 March 2019, but continued exchange between the legislatures will remain valuable. The EP has strong bilateral relationships with some extra-EU parliaments—for instance the US Congress—which could form a model for bilateral cooperation between the EP and the UK Parliament.

CONCLUSION

There is much uncertainty ahead. It is not clear yet what the precise nature of the withdrawal agreement will be and whether Theresa May will be able to find a majority in Parliament to support her vision of Brexit. It is also unclear how the future UK–EU relationship will unfold and, as a result, what forms of parliamentary oversight and inter-parliamentary cooperation would suit the future arrangements. What is clear, however, is that scrutiny of EU activities and cooperation between

European legislatures will remain necessary even as the UK withdraws from the Union.

In short, Brexit has had profound implications for the role of Parliament in the British Constitution, for the authority of Parliament vis-à-vis British citizens, and for the dynamics of partisan competition in the UK. Looking ahead, these are at once exciting and challenging times for Parliament, given its centrality in the Brexit process and the magnitude of the stakes involved. If the Brexit vote was really about parliamentary sovereignty, it is imperative that the role of Parliament is respected in the withdrawal process, that its authority is not undermined by recourse to the nebulous ‘will of the people’, and that arrangements for the future UK–EU relationship accord sufficient space for adequate parliamentary scrutiny and oversight.■

THE DAHRENDORF FORUM

The Dahrendorf Forum is a joint initiative by the Hertie School of Governance, the London School of Economics and Political Science, and Stiftung Mercator that recognises expert knowledge and public debate can each benefit from mutual exposition.

The Dahrendorf Team generates and disseminates social science research that is both policy relevant and of the highest standard. The researchers concentrate on impacting high-level policymakers and practitioners close to the centres of political action and decision-making.

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