



A prime minister unshackled

by John Springford

9 May 2017

Checks on prime ministerial power are weak in Britain – and Theresa May’s massive parliamentary majority after the general election will weaken them further. In the context of Brexit, this is dangerous.

EU law has been the biggest check on British government power since 1973. It has prevented the British government from coddling favoured industries or discriminating against immigrants from the EU. Theresa May’s decision to pursue a hard Brexit, leaving the EU’s legal framework entirely, will remove an important constraint on executive power in Britain. This will ultimately damage the country’s interests abroad and raise the likelihood of policy mistakes at home. And her decision to call a general election will strengthen the power of Number 10 over parliament, which further raises the risks.

Compare and contrast the Westminster system, with its strong governments, weak parliaments and strong party discipline, with the checks and balances of the US. The founding fathers of the US divided executive powers between the President and Congress. In his 2014 book, *Political Order and Political Decay*, Francis Fukuyama bemoaned this division of authority, as Congress had become gridlocked by polarisation and corrupted by the influence of lobbyists, and the already weak executive branch’s power had been further eroded by the threat of litigation through the courts. Fukuyama argued that the effectiveness of the US government has been hamstrung by the country’s constitution, political polarisation and legions of interest groups; as a result, the country is incapable of responding quickly enough to social and economic change.

Fukuyama’s argument presents us with a paradox. The gridlock in Washington opened the door to Trump, whose authoritarian instincts mean that checks and balances are needed more than ever. Donald Trump is being forced to moderate his positions because of opposition from Congress, the civil service and the courts.

In Britain, however, Brexit and the general election on June 8th will concentrate power still further in the hands of the executive. Checks and balances will be weakened still further just at the moment when rational, evidence-based policy making is under threat from rising economic and political nationalism.

There is a strand of Tory thought that has always been suspicious of anything that leads to a dilution of what the Conservative Lord Chancellor Lord Hailsham called in the 1970s the “[elective dictatorship](#)”: a government that must simply rely on its parliamentary majority to get things done. The classical ‘Westminster system’ has few constraints on executive power, other than periodic elections and the press ensuring that corruption and bad policy are brought to light. There have been frequent complaints in conservative circles about the ceding of executive power to unelected quangos (quasi-nongovernmental organisations) such as energy regulator Ofgem, water regulator Ofwat and the Financial Conduct Authority; the use of independent policy reviews by academics; and the Human Rights Act, which provided Britain for the first time with a bill of rights, derived from the European Convention on Human Rights, and enforceable in the courts. Conservatives have always been uncomfortable with the EU – the biggest constraint on British executive power – because they do not believe in Madisonian checks and balances.

Theresa May is odds-on to win a massive parliamentary majority in June’s election. That will mean that she will be able to make the Brexit trade-offs in a way that accords with her interpretation of the will of the majority. She has already decided that Britain will pull out of the single market and customs union, because to do otherwise “[would to all intents and purposes mean not leaving the EU at all](#)”. She may decide ultimately to pursue a softer form of hard Brexit, signing up to some EU rules in order to minimise the economic damage, making EU budget payments, remaining comparatively open to EU migrants, and convincing the EU that a court that is not the European Court of Justice (but defers to its judgements) could arbitrate disputes.

But given May’s emphasis on sovereignty and determination to curb immigration there is little reason to believe that such a softer-hard Brexit will happen: a much more limited free trade agreement is a more likely outcome. She may even decide to walk away from the negotiating table, and hope to manage the economic fallout by wrapping herself in the flag, accusing the 27 of “ganging up” on Britain, and deeply wounding the UK’s important alliances with France, Germany and the rest of Europe in the process.

The general election will mean that parliament will not provide much resistance to whichever approach the prime minister takes. New MPs will be beholden to May for winning them their jobs; and many will want positions in government (the very limited powers of parliament mean that being a ‘mere’ backbencher, confined to scrutinising legislation, is almost an insult in Westminster). Labour will be in disarray – it may win fewer than 200 seats, which would be its worst performance since 1935. And the other ‘progressive’ parties – the Scottish National Party, Liberal Democrats, Greens and Welsh nationalists Plaid Cymru – have little incentive to work together, because the British electoral system makes coalitions unlikely.

The ‘Great Repeal Bill’ will allow the government to change swathes of legislation without much parliamentary scrutiny. The bill brings all EU law into British law, so that nothing immediately changes after the former is no longer in force. But the bill also allows the government to make changes to acts of parliament (‘primary’ legislation) by a secondary act with limited or no further parliamentary scrutiny. While the Brexit secretary, David Davis, has said that such secondary legislation is needed because there

will be a huge number of technical changes to existing laws that give force to EU directives in Britain, the government's white paper on the bill does not clarify what constitutes a technical change and what is substantive. The temptation, given the volume of legislation that will need to be changed, will be to use secondary legislation to make substantive changes. The Great Repeal Bill will be probably passed without much amendment, assuming that May wins a large majority.

The general election itself will significantly disrupt parliamentary scrutiny of government. Many select committee inquiries relevant to Brexit remain unfinished; there is no guarantee that when the committees are formed again in October they will relaunch the same inquiries. Given the probable size of the Conservative majority, the committees will be less likely to make trouble for the government.

So Brexit – and the Brexit general election – will concentrate power in the hands of the government. There are four reasons why this will ultimately be damaging.

The first reason is a direct consequence of Brexit. Britain benefits from the fact that EU law constrains government power throughout the EU. It prevents other EU governments from discriminating against British interests and migrants on the continent. This openness, founded on laws and guarded by courts, is the basis of free trade, the free exchange of ideas and capital, and the freedom to move. It liberates people to buy, sell, work, study, move, innovate and invest as they like in nearby European markets. Britain may escape the constraints of EU law, but it will no longer benefit from the constraints EU law imposes on other governments. That will inevitably damage the interests of British exporters, investors and migrants in the EU.

The second reason is that any Brexit-related decision will be hard to reverse. "Elective dictatorships" may work well when bad policies can be reversed by new governments. Brexit is a negotiation between the 27 and Theresa May, and the decisions she takes will not be reversed for many years, if ever. And governments are more likely to make mistakes when their policies are not contested. This is a particular problem in international affairs, where nationalism can easily warp debate. May has already pitted the will of ordinary people against the "citizens of nowhere" in pursuit of her hard Brexit strategy, betting that the people will be willing to suffer the economic costs of single market exit. But the form of hard Brexit matters. A comprehensive FTA would minimise the damage from a single market exit, but is likely to come with so many strings attached that May will ultimately negotiate something much more limited; only to find that the economic costs are so large that she gets blamed in the end. The problem is that these costs will largely materialise once the deal has been done.

The third reason is that expertise is important. May wants to centralise power in Number 10 in order to manage the difficult political choices that will have to be made. But Brexit negotiations will require detailed, technical knowledge – on how to arrange new customs procedures with the EU; on how to get companies to enforce the governments' visa regime for EU nationals; on which EU regulations can safely be scrapped or improved. This knowledge is usually gained by civil servants through public consultations alongside their own analysis. And select committees, by calling independent witnesses, can sometimes highlight important issues that the government has overlooked. But May's desire for secrecy during the negotiation phase means that she risks negotiating without knowing the potential costs or benefits of one course of action over the other, raising the likelihood of blunders.

The fourth reason is that a stronger executive, when mixed with vogueish illiberalism of British politics, results in policy that satisfies the gut rather than the head. The [overwhelming evidence](#) shows that grammar schools, which select by ability at the age of 11, reduce social mobility rather than raising it, but Theresa May plans to open new ones. Last month, May reaffirmed the Conservative commitment to a net migration target of less than 100,000, which is illogical (the government has no control over rates of emigration) and economically damaging (the target requires government, not employers, to decide what immigrants the UK labour market needs).

The theme of Fukuyama's work is the trade-off between popular participation in government and its effectiveness. The British government is restricting popular participation in government in order to be effectively illiberal. In the context of Brexit, this raises the risk of miscalculation – and, since Remainers are excluded from the process, makes it all but impossible for the final deal to bring the country together.

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