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REVIEW OF BOOKS

A Journal of Political Thought and Statesmanship

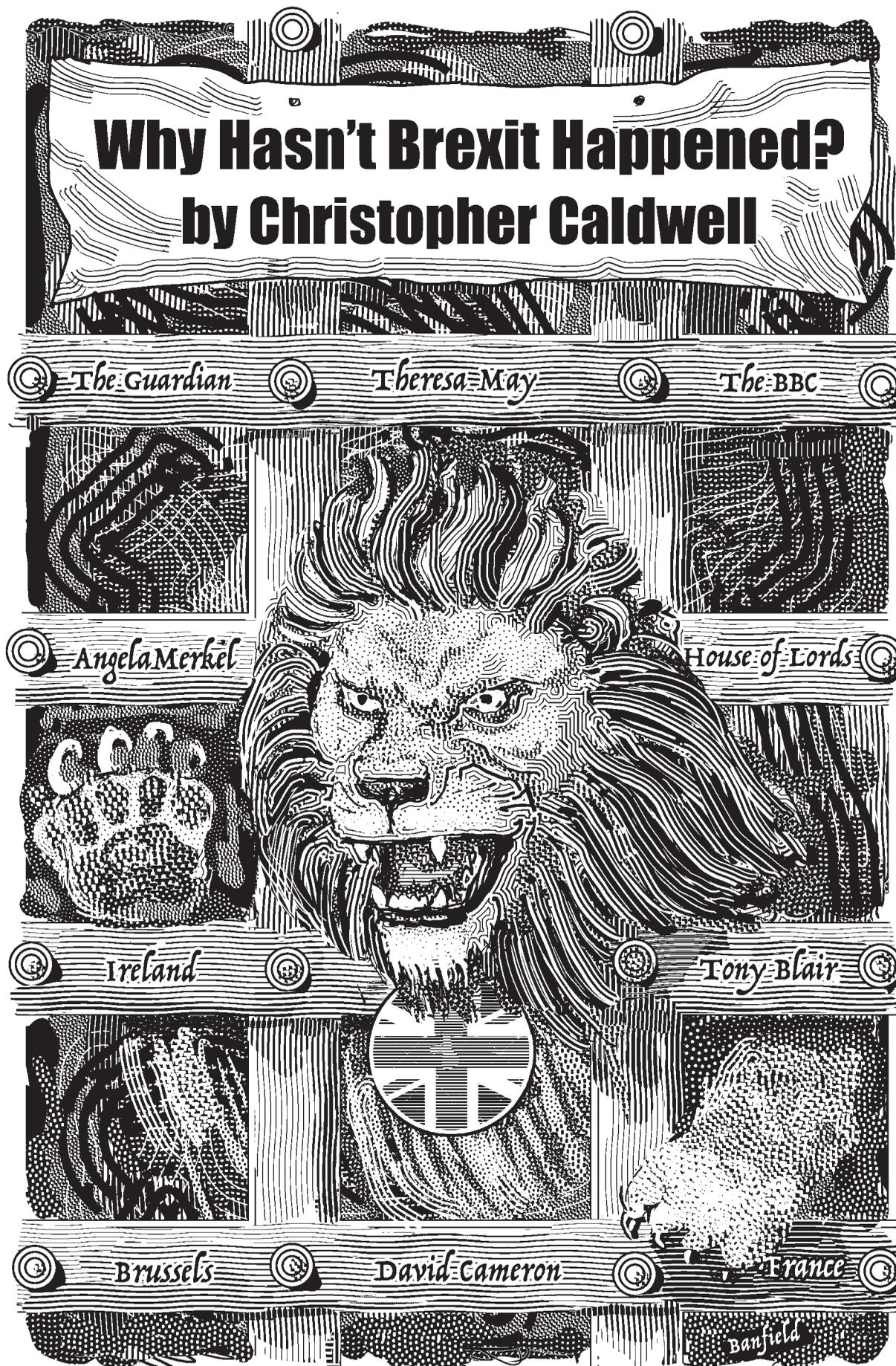
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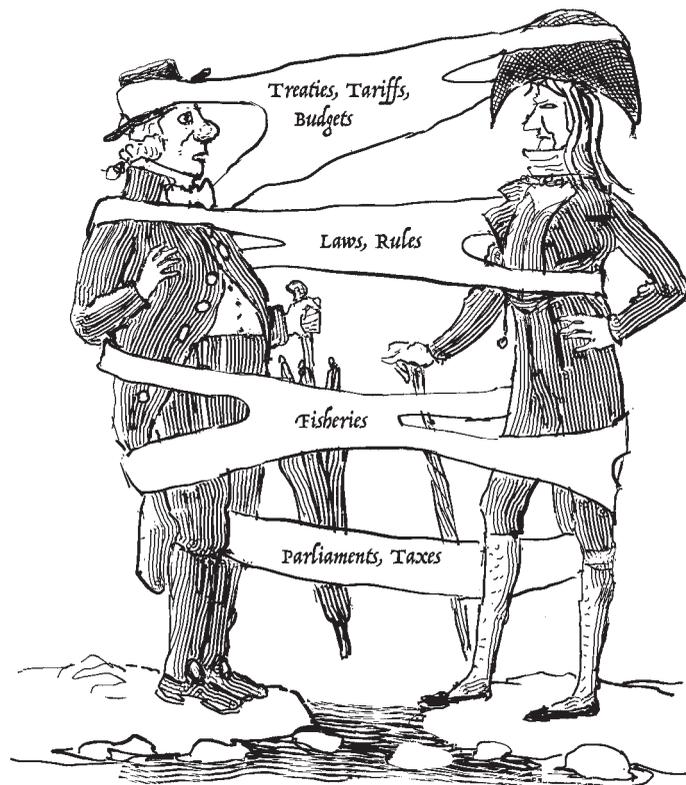


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WHY HASN'T BREXIT HAPPENED?



“When in the course of human events....”

INCOMING BRITISH PRIME MINISTER BORIS Johnson’s first address to the House of Commons on July 25 coincided with the arrival of a heat wave so devastating it sparked talk of a global-warming apocalypse. Steam rose out of the Thames, overhead electrical wires melted on the London-Luton train line, and the Cambridge University Botanic Garden registered the highest temperature (102° F) in the history of the British isles. Naturally there was joking among political pundits about “hot air” and a government “meltdown,” but there were darker grumblings, too. This was a descent into “populism,” one could read in the pages of the *Guardian*, the *Independent*, and papers from the European continent. That the Conservative Johnson had moved into the prime ministerial townhouse at 10 Downing Street meant that Britain was now under the control of a “clown,” a “saboteur,” or, worse, the British equivalent of U.S. president Donald Trump.

Whether one backed the antic, mop-haired Johnson or not, it was obvious at a glance that he exhibited none of the traits that the adjective “populist” is usually meant to evoke. Eton and Oxford-educated, he has been a foreign

correspondent, the editor of the venerable weekly the *Spectator*, the mayor of London, and, until his resignation in 2018, foreign secretary. The real grounds for elite hostility toward him lay elsewhere: Johnson came to office promising—“do or die,” as he put it—that the government would honor its commitment to withdraw the United Kingdom from the 28-nation European Union on October 31. In a long-sought 2016 referendum, British voters had approved this British exit, or “Brexit.” At a time when British politicians of all establishment parties had stood against Brexit in almost unbroken solidarity, Johnson had made himself its most prominent backer.

Johnson’s Conservative predecessor, Theresa May, found the job of implementing the referendum’s mandate either beyond her powers or not to her tastes. More than three years later Britain remains stuck in the E.U. Johnson has taken a different tack—he has burned his ships. He nominated Dominic Cummings, an architect of the referendum campaign, to mastermind the implementation of Brexit, and filled his cabinet with convinced Brexiteers, purging every last “gloomster,” to use his vocabulary. He solemnly told a divided Parliament that “under

no circumstances” would he appoint a new U.K. commissioner to the European Union. And he announced that, should Britain’s European neighbors prove unwilling to let the country go its own way, he would leave the E.U. without agreeing to a deal—a course Theresa May considered too fraught with danger to undertake.

One of them—either May or Johnson—is going to be vindicated in the eyes of history. To figure out who, we need to figure out why Brexit didn’t happen—why Britain’s government has thus far not declared its independence from the E.U. despite an explicit promise to its people that it would do so. Perhaps, in an interdependent world, national sovereignty is as unrealistic an indulgence as the E.U.’s champions always claimed. Or perhaps the E.U.’s ability to evade democratic accountability has proved even more robust and tenacious than the champions of Brexit had feared.

Project Fear

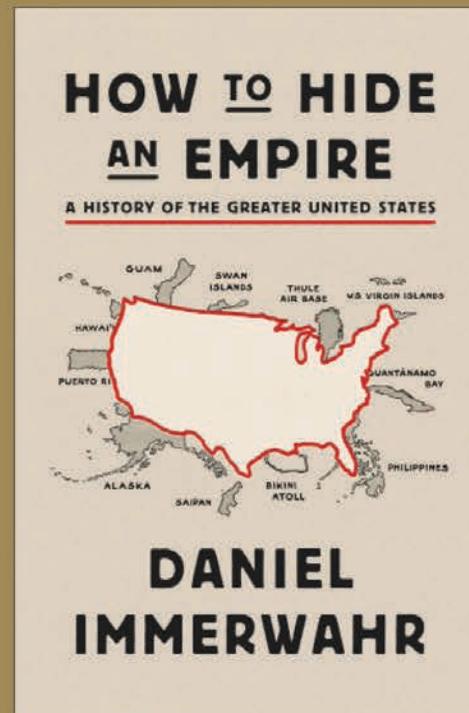
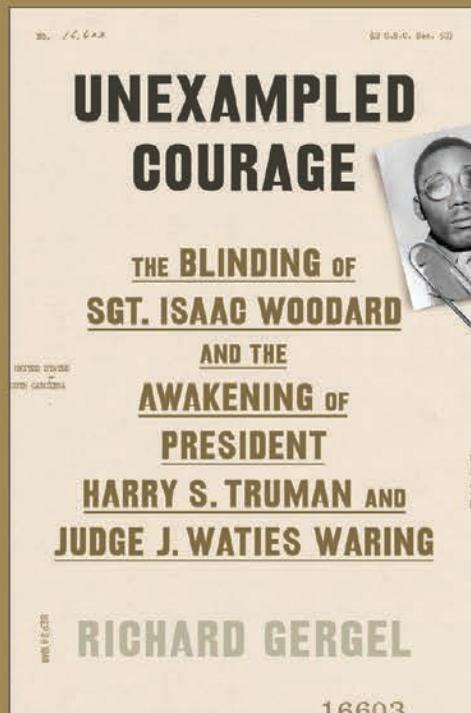
THE E.U. WAS CONCEIVED BY AMBITIOUS Cold War politicians as a federation-in-embryo, but presented to the public as an exercise in international friendship. Its

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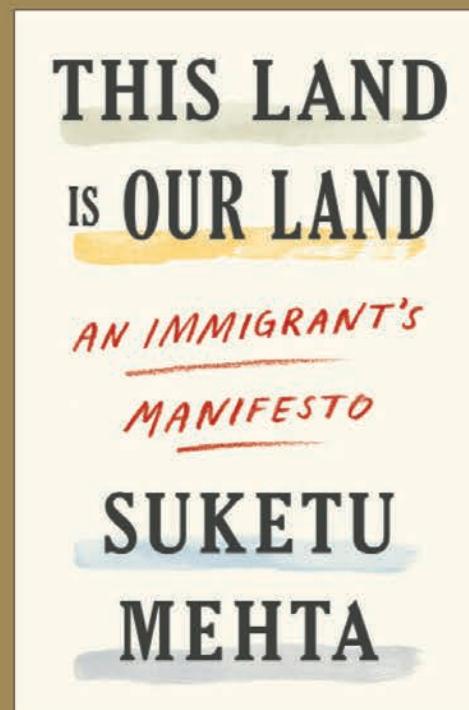
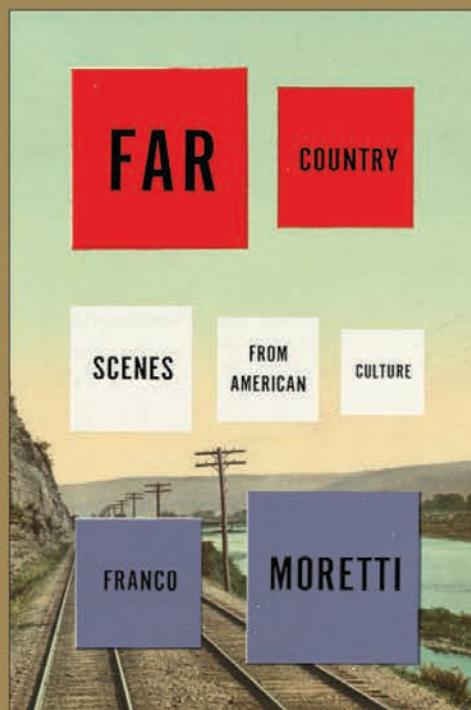
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“This is a brilliant and urgently necessary book, eloquently making the case against bigotry and for all of us migrants—what we are not, who we are, and why we deserve to be welcomed, not feared.”
—Salman Rushdie

“The must-read book for 2019. Suketu Mehta is one of our finest thinkers and writers on the subject of immigration.”
—Gary Shteyngart



main achievement has been to impose economic deregulation on duly elected national governments wherever they have resisted it, thus grooming Europeans for global capitalism. But it has also made ever bolder claims to chart the destinies of the countries that make it up, meddling in questions of school bullying in Spain, pensions in Italy, and press regulation in Hungary. European voters have been losing patience with the E.U., even as zeal for it among local governing elites has risen.

The Conservative Prime Minister Edward Heath brought the United Kingdom into the European Economic Community (EEC) in 1973, and voters ratified the decision in a referendum two years later. But discontent spread, especially after the Maastricht Treaty of 1992 transformed the European Community into the E.U., setting its member countries on a path toward an “ever closer union.” Maastricht was narrowly and rancorously passed in the U.K. Parliament, in a way that poisoned British politics, especially among Conservatives, or Tories, as they are sometimes called. Whenever British people were asked their feelings about the E.U. in a way that didn’t activate either their insecurity (disliking the E.U. is low-class) or their fear (leaving the E.U. will cause a depression), they opposed it. It took constant vigilance to keep anti-E.U. sentiment from rising to the surface.

The (large-c) Conservative Prime Minister David Cameron assented to the 2016 referendum in order to silence a rebellion of his (small-c) conservative colleagues. He did so reluctantly, and put himself at the head of the pro-E.U. “Remain” forces. Although experts doubted voters would want to pull out of the E.U., Cameron well understood that those experts were complacent. That is why he turned the 2016 campaign into “Project Fear,” to use an expression one of his own campaigners had coined for a different referendum two years earlier. He enlisted British businessmen to describe Brexit’s dire consequences for employment. He commissioned studies from the Treasury to illustrate the deadly impact of Brexit on the British economy, and used government funds to have these studies printed in brochures that were distributed to every household in the country. (Those projections have turned out to be spectacularly off-target.) He invited leaders from around the world to warn Britons of the contempt in which the international ruling class would hold the United Kingdom if they favored London over Brussels. United States President Barack Obama went so far as to tell British voters that if they chose to leave the E.U. they would find themselves at “the back of the queue” in their dealings with the United States.

These elaborately manufactured and precision-timed bombshells were lobbed at the rate of one per news cycle throughout the spring of 2016. Shortly before the vote, Cameron even gathered veterans of World War II to his side as he warned that, should his listeners be rash enough to exit the E.U., the United Kingdom might soon reacquire itself with what he called the “serried rows of white headstones in lovingly tended Commonwealth war cemeteries.”

It was, in short, a thoroughly unfair campaign. But because the side against which the deck had been stacked won, the referendum seemed to have a calming effect. Turnout for the election had been massive, and the 52% to 48% victory extraordinary. The 17.4 million people who voted to leave the E.U. were the largest number of Britons who had ever voted for anything. Only the 1975 EEC referendum came close. No political party had ever come within 3 million votes of it.

Independence Ignored

IT WAS REASONABLE TO ASSUME THAT IN Britain’s heart of hearts, absent peer pressure and government scare tactics, sentiments were even more pro-Brexit than the impressive majority at the ballot box could convey, and that the change of regime would be almost self-enacting. “The Government will implement what you decide,” leaflets distributed during the referendum had promised. So the Brexit forces disbanded. The beery wiseacre Nigel Farage, whose U.K. Independence Party (UKIP) had focused single-mindedly on discontent with the E.U., retired from politics. The Tories returned to business as usual. Upon Cameron’s resignation, members chose as his successor the former home secretary Theresa May, who had not even backed Brexit herself. That seemed not to matter. “Brexit means Brexit,” May dutifully intoned. It was government policy. Brexit would be a bureaucratic sideshow to the real business of her premiership, which May laid out when she devoted her first major speech to “Seven Burning Injustices,” most of them involving race, class, and gender. On March 29, 2017, Parliament activated Article 50, which fixed the date for Britain’s departure from the E.U. exactly two years later. Now Brexit seemed locked in beyond the shadow of a doubt. May then called (and was nearly ousted in) a general election, on which the Brexit question had hardly any effect, because her Labour foes treated the matter as settled. And then, two years later...

No Brexit. It has been postponed. Yes, Britain will regain its independence on October 31, if Brexit’s adversaries do not find a

way to block it. But those adversaries include almost the whole of Britain’s political, economic, and journalistic elite, and they have been ingenious in finding ways to block it thus far. The largest and highest-stakes exercise in democracy that the country ever engaged in—the culmination of decades of soul-searching, in which the country insisted on its independence, its national identity, and the primacy of its constitutional system—is at risk of simply being *ignored*.

May left office in disgrace and in tears, burbling about “race disparity audits” and “gender pay reporting” and fair treatment for gays. Perfectly legitimate subjects for another time, but not for a moment when the country’s sovereignty hung in the balance. Her inability to understand the stakes of her three-year premiership made her the country’s most significant political failure since Neville Chamberlain. What does this mean for Boris Johnson? To the alarm of all Remainers (many of whom despise him), and even a good number of Brexiteers (many of whom envy him), it places him in the most Churchillian situation of any incoming premier since Margaret Thatcher after the strike-ridden “Winter of Discontent” in 1979, or possibly since Churchill himself in 1940.

The press mostly sees Britain’s current impasse as the result of some oversight or mistake, whether May’s or the voting public’s. “Parliament has bungled Brexit,” wrote a correspondent in the conservative *Telegraph*. A “national haemorrhage of shared purpose and belief began in earnest in June 2016,” according to the progressive *Observer*, “when Britain voted to leave the E.U.”

But this explanation is quite wrong. The divisions were there in the first place. In Britain as elsewhere in the world, the struggle has been unleashed by innovations in administration that have arisen since the Cold War. These shift power from electorates and parliaments to managers of information, inside government and out. From thousand-year-old constitutional ideas to five-year-old ones. From habeas corpus to gender identity. Because it was Britain that did the most to construct the ideal of liberty which is now being challenged, Brexit clarifies the constitutional stakes for the world as nothing else.

Over decades, British citizens have cloven into two parties of roughly equal strength. The Brexiteers are the party of the unwritten British constitution as it existed from the Glorious Revolution of 1688-89 until Britain’s accession to the E.U. in 1973. This is the tradition of “parliamentary supremacy,” as John Locke called it, or “parliamentary sovereignty,” as it more often came to be



called. It can be a confusing doctrine. In a constitutional context, “Parliament” means the House of Commons, *plus* the Lords, *plus* the Queen. “The Queen in Parliament” is the ultimate law-making, and constitution-making, authority. The House of Commons legislates and so (to a lesser extent) does the House of Lords; the cabinet exercises executive prerogatives in the name of the Queen. Courts can’t “overturn” anything, though traditionally there was a role for the Lords as legal interpreters of last resort. Important parts of this arrangement have been scuppered, and if you favor that scuppering you’re probably a Remainer.

Remainers are the party of the European Union’s constitutional tradition, the tradition of human rights and judicial review. And, to make things more confusing, of referenda. The 1973 vote to enter the EEC was the first the United Kingdom ever had. The Brexit referendum of 2016, paradoxically, used an E.U.-era innovation to put an end to the E.U. era.

Only once the process of Britain’s secession got underway was it possible to understand fully the conflict between these two constitutional traditions. Federal Europe had penetrated British constitutional life much more thoroughly than Brexiteers could face or Remainers admit. E.U. law had become “entrenched,” to use a British legal term. As Brexit began dis-entrenching that law, it threatened to dis-entrench along with it the privileges of a whole class of people at the top of society. In response, that class coalesced with a mighty solidarity. Just after the Brexit vote, the *London Review of Books* essayist James Meek wrote of a gentle, cosmopolitan liberal friend who had asked him: “What about all these powerful backroom interests in the City that are supposed to have the government in their pocket? Why aren’t they stepping in behind the scenes to stop this?”

Britain’s politics was coming to resemble something Donald Trump’s adviser Steve Bannon had said in a different context in February of 2017: “If you think they’re going to give you your country back without a fight, you are sadly mistaken.”

The Constitution and the Courts

MANY STATESMEN WARNED FROM the outset that British ideas of liberty would not survive a merger with the E.U. The most eloquent early diagnoses came from the Labour Party, not the Tories. That is because the fundamental disposition of the E.U. is to favor technocratic expertise over representative government, and the Tories have not generally been the

British party that placed the highest priority on the passions of the masses. In 1962, as Tory Prime Minister Harold Macmillan was eyeing EEC membership, Labour leader Hugh Gaitskell warned, “[I]t does mean the end of Britain as an independent nation state.... It means the end of a thousand years of history. You may say ‘Let it end’ but, my goodness, it is a decision that needs a little care and thought.”

Gaitskell was right, but it is only in recent years that people have begun to see exactly *why* he was right. It was always understood that joining the EEC in 1973 compromised Britain’s national sovereignty. All countries that joined had to acknowledge the supremacy of E.U. law over their own. This was a deadly serious thing if you reasoned the consequences to the end. For one thing, it deprived Britain’s monarchy of its (already somewhat vestigial) logic. Monarchs are not underlings: in joining the EEC, Britain could be said to have deposed its queen. Pro-E.U. politicians assured their voters that it wasn’t as serious as that.

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Britain, they said, had to give a little bit of its sovereignty up in order to receive the benefits of cooperation, the way it did in, say, NATO. Other European countries had done so without wrecking their systems.

But this was a false analogy, as the political scientist Vernon Bogdanor explains persuasively in his recent book, *Beyond Brexit*. NATO was a treaty. The EEC was a merger. What is more, the EEC that Britain joined had been designed by the major countries of continental Europe in line with their own traditions and interests. It was not in line with Britain’s. Britain had no institutions like the European Commission, an unelected body that could (and still does) initiate legislation. Britain’s politicians didn’t understand the rules intuitively and were less able to work the system. British political institutions were unsuitable as a “farm system” for training E.U. politicians.

And there was an even larger problem than the loss of national sovereignty, Bog-

danor shows. The E.U. destroyed the system of *parliamentary* sovereignty at the heart of Britain’s constitution. For all its royalist trappings, Britain has traditionally been a much purer representative democracy than the United States, because it excludes courts from reviewing legislation on any grounds. British politicians tried to calm the public with assurances that, where British law and E.U. law clashed, British law would prevail. But the acknowledgement of E.U. legal supremacy in the treaties meant that E.U. law *was* British law. In the 1980s, British judges began finding that parliamentary laws had been invalidated by later British laws—a normal and time-honored process, except that these new “British” laws had been imported into British statute books not by legislation but by Britain’s commitment to accept laws made on the continent. Bogdanor, who is a Remainer and a defender of human rights, does not necessarily condemn this development. But it meant that, through the back door, judicial review was being introduced into a constitutional culture that had never had it.

Quangos and foundations began designing cases—concerning migrants’ rights, gay rights, search-and-seizure—that unraveled the centuries-old fabric woven from the rights and duties of British citizenship. A new fabric began to be woven, based (as are all such systems in Europe) on post-Civil Rights Act American law and on the litigative ethos of the American bar.

In 1998, Labour Prime Minister Tony Blair passed the Human Rights Act, which swept into British law the European Convention on Human Rights (a pre-E.U. document dating from 1953). It also bound Britain to abide by decisions reached by the European Court of Human Rights, which sits in the French city of Strasbourg. Article 8.1 of the Convention (“Everyone has the right to respect for his private and family life, his home and his correspondence”) was supposed to protect people from the prying eyes of the state, as our Fourth Amendment does. But as the judge and scholar Jonathan (Lord) Sumption noted in a series of lectures this summer, it quickly became the “functional equivalent” of the due process clause of the American 14th Amendment—grounds for all kinds of judicial adventurism. British judges discovered that Article 8:

potentially covers anything that intrudes upon a person’s autonomy unless the Court considers it to be justified... the legal status of illegitimate children, immigration and deportation, extradi-

tion, criminal sentencing, the recording of crime, abortion, artificial insemination, homosexuality and same sex unions, child abduction, the policing of public demonstrations, employment and social security rights, environmental and planning law, noise abatement, eviction for non-payment of rent and a great deal else besides.

In the late 1990s, Blair began a reform of the House of Lords, depriving all but a few dozen hereditary peers of their right to sit. He replaced those ousted with a body that was meant to be more meritocratic but wound up less diverse and arguably more class-bound—a collection of activist foundation heads, “rights barristers” (as legal agitators are called), think-tank directors and in-the-tank journalists, and political henchmen. Judicial functions that the House of Lords once carried out were calved off into an actual Supreme Court, which took over as the high court of the land.

Eventually even the reliably anti-Brexit *Economist* came to see that some of Britain’s major problems had arisen from constitutional meddling. David Cameron’s 2011 Fixed-Term Parliaments Act, in particular, made it much more difficult to call the general elections that would ordinarily have been provoked by the resounding repudiation of Theresa May’s withdrawal package. Blair and Cameron, the magazine noted, “came to power when history was said to have come to an end. They saw no need to take particular care of the constitution.” E.U. membership hid these problems—if Britain wasn’t paying attention to its constitution at the time, it was partly because it had been using someone else’s.

These shifts in Britain’s constitutional culture have become obvious during the rolling European migration crisis of recent decades. The more courts took control of immigration policy, the harder immigration was to stop. As home secretary under David Cameron, May promised to limit Britain’s galloping population growth to “tens of thousands a year, not hundreds of thousands.” But net migration has been running at around a quarter-million ever since, rising as high as 333,000 in 2015. Last year, according to Migration Watch U.K., net migration was 258,000. That means 74,000 Europeans added to 232,000 non-Europeans who arrived, and 48,000 Britons who left. May was just a talker when it came to immigration policy, but no politician in three decades had done any better. Once the judiciary rules politics, all politicians are just talkers. Un-

derstand that, and you are most of the way to understanding Brexit.

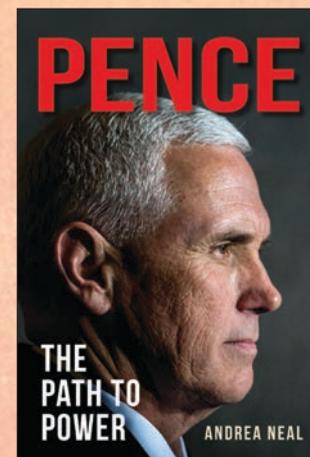
The transfer of competences from legislatures to courts is a superb thing for the rich, because of the way the constitution interacts with occupational sociology. Where the judiciary is drawn from the legal profession, and where the legal profession is credentialed by expensive and elite professional schools, judicialization always means a transfer of power from the country at large to the richest sliver of it. This is true no matter what glorious-sounding pretext is found to justify the shift—racial harmony, European peace, a fair shake for women. In a global age, judicial review is a tool that powerful people expect to find in a constitution, in the same way one might expect to find a hair dryer in a hotel room.

Negotiating the Withdrawal

FROM THE BEGINNING, A CERTAIN NUMBER of Remainers had called for a second referendum, arguing that the people had not really known what they were voting for when they chose Brexit. The *Independent* newspaper had the gall to call this hypothetical rerun a “People’s Vote,” though sometimes they called it a “Final Say.” The People themselves were suspicious. It was the oldest trick in the E.U. book to hold second referenda when—and only when—the public’s wishes diverged from those of Brussels. It had been used in Denmark in 1993 and in Ireland in 2002 and 2009. By 2017, though, these do-overs had become a Europe-wide symbol of contempt for voters. And that is why Parliament voted overwhelmingly in March 2017 to validate the referendum, activate the E.U.’s Article 50, and fix the date for British withdrawal.

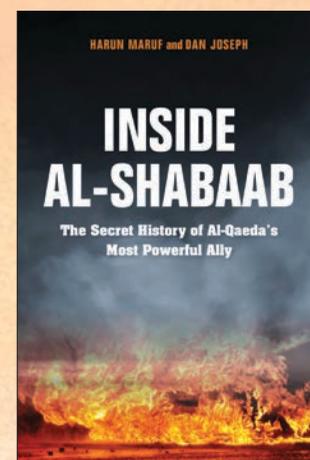
But there were a couple of details left. Article 50 called for a two-year negotiating period between the seceding country and the E.U., in order that the two might come to an optimal post-separation arrangement. From the outset there was a dangerous asymmetry of motives. Britain had nothing against its neighbors on the continent—it sought only the right to make its own decisions again. The E.U.’s leaders, however, had an incentive to inflict maximum hardship on Britain. In most member countries the E.U. was being blamed for stagnating economies, dizzying inequality, and out-of-control immigration. If Britain were granted a pain-free exit, others would follow suit.

Early in the negotiating process, Britain’s ambassador to the E.U., the Brussels insider Ivan Rogers, submitted his resignation, warn-

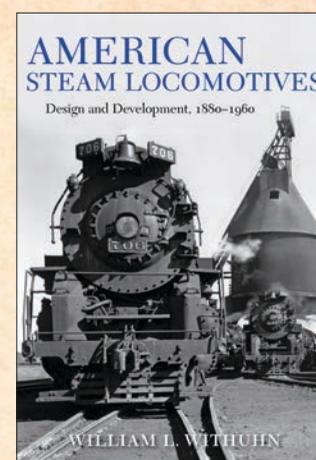


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ing that Britain was going to get its head handed to it at the bargaining table. “Serious multilateral negotiating experience is in short supply in Whitehall,” he wrote, “and that is not the case in the [European] Commission or in the Council.” He was right about that, and it was a lesson in the sociology of Brexit. In England, at least, the electoral map of Brexit looked like the electoral map of Donald Trump’s presidential victory in America would look later that year. Remain was the choice of those who benefited from the global economy. It won overwhelmingly in a few compact islands of rich people, intellectuals, and minorities—London, Oxford, Cambridge. The ranks of Remain-aligned politicians were crowded with well-educated, tech-savvy, cosmopolitan people. Leave won everywhere else. It was the choice of yesterday’s Britain, the Britain of losers.

Even after its victory, Leave found itself constantly out-thought, out-classed, and out-worked by Remain. May made David Davis, a party bull approaching the end of his career, her chief negotiator. He didn’t seem to think the post would require too much energy, expertise, or imagination—because, at the end of the day, Britain could walk away from the negotiating table with no deal. How could May have put Brexit at risk by picking some-

one like Davis to secure it? Well, how could Donald Trump have put his presidency at risk by picking someone like Jeff Sessions to defend it? The answer in both cases was the same: in populist causes, the pickings are slim, personnel-wise.

The continental negotiators, by contrast, were the cream of Europe’s educated classes. The E.U. is a highly elaborated administrative state. Indeed, it is an especially logical and efficient one, because it has developed *before* the underlying society—so there are no pragmatic or traditional considerations to complicate its rules or shrink its remit. Rogers loved legalistic gobbledygook, noting that the E.U. tacticians would know how to withhold “adequacy determinations” under the “GDPR” (General Data Protection Regulation) and they were masters of “equivalence decisions”—whatever any of that meant. His slashing book on the whole Brexit process, *9 Lessons in Brexit*, would become a bible of London’s pro-E.U. intellectuals, from historian Simon Schama to Harry Potter creator J.K. Rowling. But to read it is to be struck by a blind spot.

Constantly belittling the public for not understanding the ins and outs of negotiating trade agreements, Rogers, for all his smarts, failed to understand that a) this was a negotiation about something deeper than trade, and

b) the sovereign people sets parameters for negotiators, not vice versa. Rogers could not see that his countrymen did not feel the same loyalty to the E.U. and its “process” that he did. He couldn’t imagine why people would want it to go away.

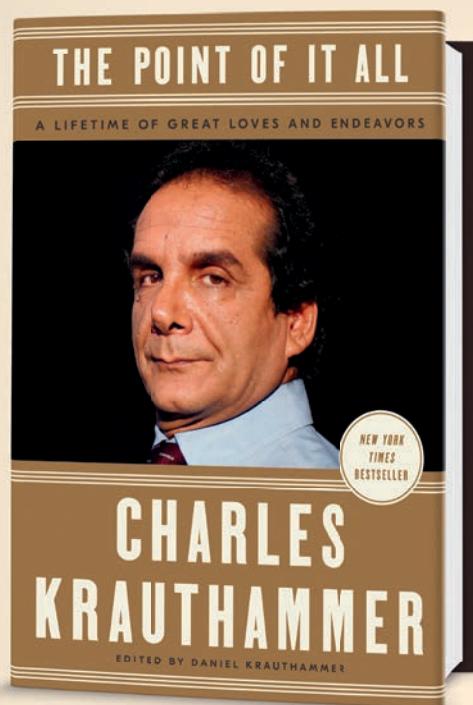
Where Loyalties Lie

ROGERS AND OTHER BRITISH EXPERTS were strangely unimpressed by the powerful practical levers their own side disposed of. Britain was the largest importer of cars from Germany. It had a trade deficit with most countries on the continent, which meant that any breakdown in talks would idle more European factories than British ones. It was, with France, one of only two serious military powers in Western Europe. It had an intelligence-gathering relationship with the United States that continental Europe was desperate to preserve the benefits of. It contained 40% of Europe’s data servers. It was due to recover its own rich fishing banks—schools of mackerel north of Scotland, beds of prawns southwest of Cornwall—where E.U. vessels took 59% of the haul. And it was the financial capital of the world. The E.U. would have no choice but to do business with an independent Britain.

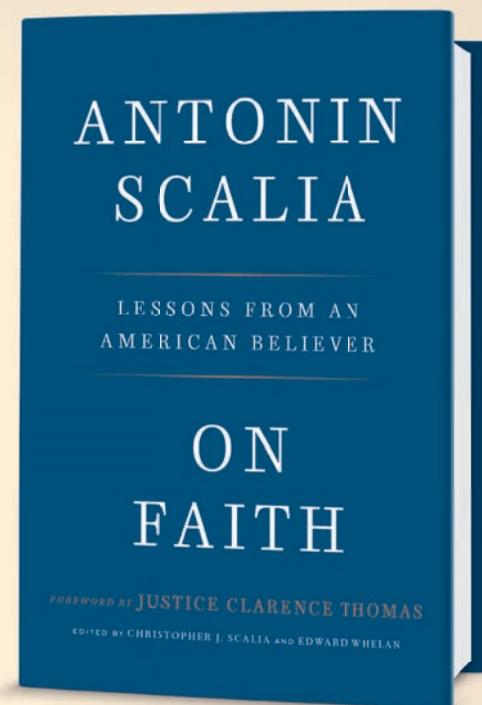
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And yet there was a hangdog tone in all elite descriptions of the Article 50 discussions. People were wishing their own country ill in an international negotiation. “If I were an E.U. negotiator,” wrote the Liberal Democrat Member of Parliament Sir Ed Davey in a fantasy of his own country’s humiliation that appeared in the *Independent*, “my starting position would be to increase the divorce fee to £50bn, arguing that the U.K. must now pay the E.U.’s cost of handling the no-deal Brexit, after refusing the first deal. Given the severely negative impact of a no-deal Brexit on everything from our sheep farmers to our NHS [National Health Service], I rather think any U.K. government would be so desperate to make some deals that £50bn might suddenly seem a bargain.”

Remainers’ hearts were with the Europeans at the table, not with the Brexiteers who were supposed to be their countrymen. There may be an innocent “epistemological” explanation for this. When a regime is changing, the old world is made of concrete things that have lost their legitimacy, while the world to come is made up of legitimate things that have not yet become concrete. Rogers hated the whole enterprise of undoing existing E.U. structures: “[W]e are privileging notional autonomy to make our own laws over real power to set the

rules by which in practice we shall be governed.” The *Financial Times* columnist Martin Wolf similarly saw no point in the Brexiteer reluctance to bind Britain’s trade policy to the E.U.’s. “It would only prevent the U.K. from making trade deals that are less important than maintaining good relations with the E.U.,” Wolf wrote in the *Financial Times*.

Every negotiator on the British side behaved as if there were nothing more important than maintaining good relations with the E.U. Perhaps that was to be expected. The E.U. pursues the goal of transcending (a fancy way to say “getting rid of”) the nation-states that make it up. As the Union grows ever closer, there must eventually come a moment when the loyalty of subjects is transferred from the institutions of the nation to those of federal Europe. Brexit showed that, for elites to whom the E.U. offers a grand role, that moment has come already. The E.U., not Britain, is their country. They saw Brexit not as most British people did—as a solemn and even sacred uprising by an ancient people against a usurper. No. Elites saw Brexit as a local nuisance in the domestic politics of the only legitimate custodian of Britain’s long-term interests: the E.U.

Theresa May fell under the influence of these views, particularly after dropping con-

servative adviser Nick Timothy in the days after her general election loss in 2017. It was Timothy who had written her “Brexit means Brexit” speech. Without him, she, too, lost sight of what Brexit was. Brexit turned into a word that meant its opposite. It was now a “damage-limitation exercise,” as Timothy would later put it. May came to believe that Brexit meant honoring the patriotic emotions that had led to a national temper tantrum, while protecting the country against any foolish actions that might result from such emotions—such as breaking relations with the European Union. In mid-2017, May opted for getting experts on board. Olly Robbins, an E.U.-friendly aide who had risen under Tony Blair and David Cameron (and who had been Rogers’s successor as Blair’s private secretary), took over as lead negotiator from the Brexiteer Davis.

The Irish Backstop

BREXITEERS NOW BEGAN TO SUSPECT that May’s own negotiators were conspiring with the European Union’s to trap Britain in E.U. membership. The means of doing this would be Ireland. In 1998 Britain had negotiated the Good Friday Agreement, a treaty aimed at quelling the guerrilla

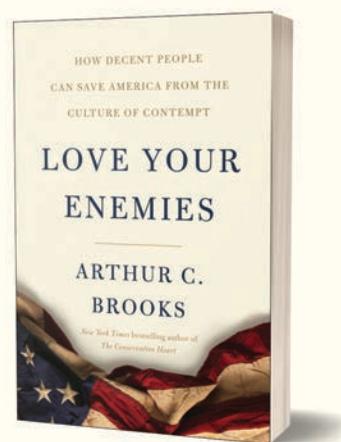
New and Noteworthy Books from AEI Scholars

Love Your Enemies

How Decent People Can Save America from the Culture of Contempt

Arthur C. Brooks

Civility isn’t enough. For America to overcome the culture of contempt that is wrecking public discourse and tearing us apart, we don’t need less anger, more agreement, or more civility and tolerance. What we need is love: not a warm and fuzzy feeling, but a clear and bracing commitment to the good of our fellow citizens—even, and especially, those with whom we disagree. How can we build a new social movement based in love? Arthur Brooks, president of the American Enterprise Institute, charts the course forward in his new book, *Love Your Enemies*.



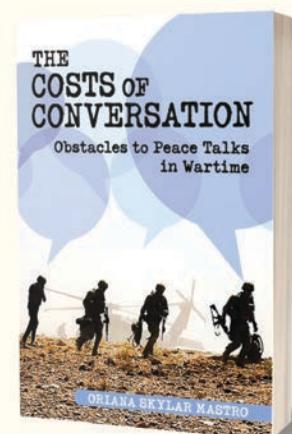
March 12, 2019
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The Costs of Conversation

Obstacles to Peace Talks in Wartime

Oriana Skylar Mastro

After a war breaks out, what factors influence the belligerents’ decisions about whether to talk to their enemy? How do we get from only fighting to also talking? Through four primary case studies, *The Costs of Conversation* demonstrates that the strategic costs of conversation best explain the timing and nature of countries’ approach to wartime talks, and therefore when peace talks begin.



March 15, 2019
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war that the terrorist Irish Republican Army had waged for decades in order to reunite 6 Northern Irish counties that belonged to the U.K. with the 26 Southern ones that belonged to the Irish republic. The E.U. insisted on a guarantee, now referred to as the “Irish backstop,” that after Brexit Britain would maintain a “soft” border with Ireland, an E.U. member state.

It was an unusual demand for a number of reasons. There had never been a hard border between the two countries, outside of military emergencies. Nor was there a need for one now. Britain and Ireland were part of the same island region, cut off by ocean and law from the E.U.’s “Schengen” area of free movement. Britain had as much reason to demand border guarantees from the E.U. as the E.U. did from Britain. And while such borders might present new challenges after Brexit, there were proven solutions: non-E.U. Switzerland, for example, keeps its borders, travel, and trade open with four major E.U. countries. These problems only became “insoluble” when E.U. diplomats discovered they might be used to tangle up the Brexit negotiations.

In December 2017, May made a terrible mistake. She agreed in a joint E.U.-U.K. report that there would be “no diminution of rights” for anyone in Northern Ireland.

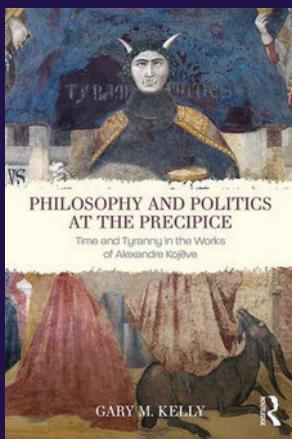
This was a promise inconsistent with Brexit. Northern Ireland, like everywhere else in the United Kingdom, would have its native constitutional regime restored by Brexit. As such, it would be moving from a polity that operates primarily through court-conferred rights back into one that operates primarily through the will of Parliament. While the Northern Irish might wind up more free, happy, and self-reliant, their “rights” would be delineated and protected in different ways, and in some respects this difference would be a diminution. Rogers had been right about the skill of E.U. negotiators. They had taken the backstop, an issue that no one had even considered until Brexit was voted, and turned it into an E.U. veto on the whole of Brexit.

Some suggested that Northern Ireland remain under the same customs regime as the Irish republic. But under the terms of the 1998 peace agreement, it couldn’t. The most important guarantee to Northern Ireland had been that Britain would not “make any change in the status of Northern Ireland [in its relation to the rest of the U.K.] save with the consent of a majority of its people.” Making Northern Ireland subject to the laws of a foreign country would count as a rather large change in status. But this difficulty prompted May’s negotiators to come up with a more am-

bitious solution. The backstop would cause no change in Northern Ireland’s status within the U.K. if the whole U.K. could be included in the European Customs area. So Britain could solve the problems created by its departure from the European Union by agreeing to remain subject to the European Union!

An abyss opened up in July 2018 at the prime ministerial retreat of Chequers, when May released a plan for future relations with Brussels. It called for harmonization with E.U. rules and regulations, described the backstop in a way that made it look inescapable, and envisioned a role for the European Court of Justice. Johnson said that May was “volunteering for economic vassalage” and resigned as foreign secretary. “[W]e continue to make the fatal mistake of underestimating the intelligence of the public, saying one thing to the E.U. about what we are doing and saying another to the electorate,” he explained. “[I]n important ways, this is...Brexit in Name Only.” Davis resigned too.

The final negotiated Withdrawal Agreement that May unveiled to Parliament last November caused the whole country, Brexiters and Remainers alike, to gasp in horror. May’s team had been sent away to declare British independence and had returned with a document of surrender. The agreement not

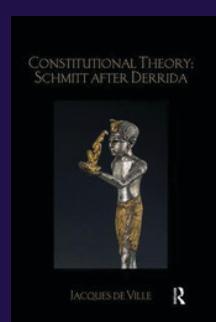
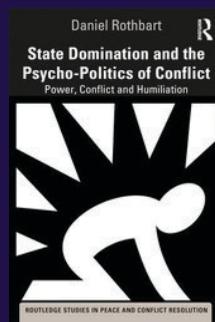
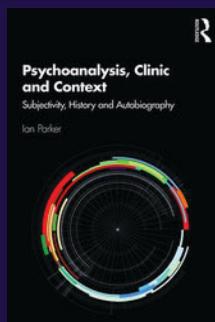


Philosophy and Politics at the Precipice maintains that political philosopher Alexandre Kojève (1901–68) has been both famously misunderstood and famous for being misunderstood. Kojève was famously understood by interpreters for seeing an “end of history” as critical to his thought. He became famously misunderstood when interpreters, at the end of the twentieth century, placed such an end at the center of his thought. This book reads Kojève again – as a thinker of time, not its end.

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only contained (as expected) a £39 billion (\$50 billion) “divorce” fee, but also left E.U. courts free to top that fee up. It locked Britain into a customs union with the E.U., with no mechanism for leaving it—ever. The E.U., and the E.U. alone, would decide when Britain had fulfilled the backstop agreement, and any move to break it unilaterally on Britain’s part would be resolved by giving the E.U. jurisdiction over Northern Ireland’s economic relations. It subjected Britain to E.U. trade sanctions more onerous than those meted out to other countries. It laid out contexts in which E.U. law would retain its supremacy over U.K. law.

The Withdrawal Agreement not only did not end Britain’s ties to the E.U. In the name of Brexit, it actually deepened and constitutionalized them. This ensured that pro-Brexit Tories would not vote for it. But it also renounced Britain’s official membership in E.U. institutions, and indeed its right to have any say in them, dooming it for anti-Brexiters of all parties. In January it was rejected in Parliament by the largest margin of any measure in British parliamentary history. It was subsequently rejected twice more.

The Withdrawal Agreement thrilled Remainers, even if they wouldn’t vote for it, and breathed new life into their cause. They could now present the Agreement not as a twisted document put together by a pro-Remain bureaucracy but as faithful depiction of modern reality. We *told* you there was no possible governing arrangement better than the European Union! Back came Project Fear, now carried out by the *Financial Times*, the *Guardian*, and the *Independent*. Back came the calls for a people’s vote, and back came all the scare vocabulary about how a no-deal Brexit would cause Britain to go over the “cliff edge” and “crash out” of the European Union.

Once the Withdrawal Agreement failed, no-deal was the form that independence had to take. It would be no deal or no Brexit. And Remainers were alarmed to realize that no-deal Brexit was the law. It had been agreed on March 29, 2017, and it would automatically become reality on March 29, 2019, unless something could be done to stop it.

The Deep State Intervenes

IT WAS SURPRISING HOW MUCH COULD BE done to stop it. Remainers were a synonym for the governing class. They had an infinity of tools, and they were no longer scared of the voters. No one wanted to be so contemptuous as to repeal Brexit, but Parliament could put a “no-deal Brexit” on hold, which it did. May’s negotiators had already produced

a “Brexit” deal that caused misgivings among the Brexiteers themselves. The prime minister’s cabinet secretary, a powerful member of the career civil service, now wrote a 14-page memo warning that no deal would lead to higher food prices and more crime. Someone in May’s office helpfully forwarded it to the *Daily Mail*. The chancellor of the exchequer, Philip Hammond, warned that Parliament might have to repeal Article 50 to “protect the value of the pound.” May herself entered into consultation with the old-school Labour leader Jeremy Corbyn to see if *he* would help pass her deal, in the course of which she even offered to agree to a second referendum. Perhaps that revealed what May had thought of Brexit all along. It was not a constitutional demand but a psychiatric symptom.

Some of the most extraordinary moments of these winter debates involved the interventions of the Speaker of the House, John Bercow. Elected as a Conservative, he had, in David Souter-esque fashion, discovered once in power that he actually opposed Conservative policies on most things, very much including Brexit. On April 3, Bercow transferred control of primary legislation from “the government” (as the cabinet is called when it pres-

Brexit was an eviction notice.

ents legislation in Parliament) to a group of Brexit rebels. That did away with a rule on which Parliament had done business for the past 330 years and threw the country into a serious constitutional quarrel. Anti-Brexiters used their control of debate to pass the European Union (Withdrawal) Act 2019, which ordered Theresa May to seek an extension of Brexit from the European Union. And that began the process that led to postponing the Brexit deadline until October 31.

Once the legislature had seized the powers of the executive, the genie could not be returned to the bottle. Brexiteers now understood that Bercow might unilaterally block any moves toward Brexit, rendering parliamentary debate futile. So some Tories began to think: what if Parliament were prorogued—kept out of session until after the next deadline passed? Labour had resorted to a prorogation in 1948, which made the idea less of a trespass on parliamentary procedure than Bercow’s. In the event, the prorogation maneuver was blocked by an amendment in the House of Lords that es-

entially bans Parliament from going out of session in October.

The failure of Brexit was the worst humiliation of a British government in decades, deepened by the sudden realization that Britain would have to take part in the European Union elections in late May. In early April Nigel Farage announced his return to politics and hastily assembled a ragtag formation called the Brexit Party. Five weeks later, with a list of nobodies, has-beens, and famous politicians’ sisters, Farage’s Brexiteers took 29 of Britain’s 73 seats to become the single biggest party in the European Parliament; May’s Tories took only four. Johnson announced his bid for the leadership, saying: “There is a very real choice between getting Brexit done and the potential extinction of this great party.”

Making Things Explicit

MOST COMMENTARY ON BREXIT DISmisses those who sought it as fantasists and the Parliament that debated it as a madhouse. “Bungle” is the favored verb in most articles on the subject, which generally explain that Britain’s difficult winter and spring illustrate what a misbegotten idea Brexit was in the first place. The Dutch diplomat Frans Timmermans, a veteran E.U. commissioner involved in negotiations, told the BBC that his British counterparts had been “running around like idiots.” European Council president Donald Tusk said, “I’ve been wondering what the special place in hell looks like for those who promoted Brexit without even a sketch of a plan of how to carry it safely.” *Washington Post* columnist Fareed Zakaria said in March, “Britain, famous for its prudence, propriety, and punctuality, is suddenly looking like a banana republic as it makes reckless decisions, misrepresents reality and now wants to change its own self-imposed deadline.”

But the reasons for the chaos of the past winter—and for the fact that Brexit has still not happened—lie elsewhere. Brexit is an epochal struggle for power, and an exemplary one. It pits a savvy elite against a feckless majority. There have been scares before for those who run the institutions of global “governance”—the rise of Syriza in Greece, with its attack on the common European currency, the election of Donald Trump, the nation-based immigration restrictions put forward by Italian interior minister Matteo Salvini and Hungarian president Viktor Orbán. But it is Brexit that has hit bedrock. If Brexit happens, our future will look one way. If not, it will look another. Those people who



warn, as Zakaria does, that voting for Brexit has decreased Britain's importance in the world—are they joking?

Only when the Leave side won the referendum did it become clear that the vote had been about not just a policy preference but also an identity. It raised the question for each voter of whether he considered himself an Englishman or a European, and of whether it was legitimate to be ruled by one power or the other. As such it made certain things explicit.

The main legacy of the European Union in the past three decades has been the suppression of democracy and sovereignty in the countries that belong to it. We can argue about whether this is the main *purpose* of the federation, but suppression of self-rule certainly counts as one of its purposes. Extinguishing national sovereignty was E.U. technocrats' way of assuring that what Germany, Italy, and Spain set in motion in the 20th century would not repeat itself in the 21st. The architects of the Brussels order proclaimed this intention loudly until they discovered it cost them elections and support. The E.U.'s suspicion of nationalism is understandable. But its hostility to democracy is real.

The self-image of today's E.U. elites is still that of protecting Europe from its historic dark side. They are confident history will regard them as the fathers of a Common European Home. In the imaginary biography he carries around inside his own head, a British

builder of the European Union, whether a human rights lawyer or a hectoring journalist, will cast himself as one of the righteous heroes of his time, one of the enlightened. He is a man who "stood alone" to "fight for his principles" and so on. Maybe posterity will even see him as a European James Madison.

Many people in all member states have sought to puncture this kind of "Eurocrat" self-regard, but Britain's anti-E.U. intellectuals have been particularly direct and pitiless. In mid-July, Robin Harris, a longtime adviser to Cold War Prime Minister Margaret Thatcher, wrote an article in the *Telegraph* urging Boris Johnson to carry out "a peaceful but revolutionary seizure of power by the British people from a supranational authority and a home-grown but deracinated, collaborationist elite."

Imagine how it strikes a man who has spent decades working for the E.U. dream—Tony Blair or Donald Tusk, for instance—to see his work likened to "collaboration." Special place in hell, indeed! Those who sought the Brexit referendum placed a proposition before the British electorate that these self-styled architects of "Europe," these idealists, had been, all along, not Europe's Madisons but its Quislings. Worse, when that proposition was placed before the British people, they assented to it.

Brexit was not an "outburst" or a cry of despair or a message to the European Commission. It was an eviction notice. It was an explicit

withdrawal of the legal sanction under which Brussels had governed Europe's most important country. If it is really Britain's wish to see its old constitutional arrangements restored, then this notice is open to emendation and reconsideration. But as things stand now, the Leave vote made E.U. rule over the U.K. illegitimate. Not illegitimate only when Brussels has been given one last chance to talk Britain out of it, but illegitimate now. What Britons voted for in 2016 was to leave the European Union—not to ask permission to leave the European Union. It is hard to see how Britain's remaining in the E.U. would benefit either side.

And yet, given that Britain is the first country to issue such an ultimatum, given that pro-E.U. elites in other European countries have reason to fear its replication, given the moral ambitions of the E.U. project, given that the British who support Remain have transferred their sentiments and their allegiances across the channel, given the social disparity between those who rule the E.U. and most of those who want to leave it, how could the reaction of Britain's establishment be anything but all-out administrative, judicial, economic, media, political, and parliamentary war? The battle against Brexit is being fought, Europe-wide, with all the weaponry a cornered elite has at its disposal.

It has proved sufficient so far.

Christopher Caldwell is a contributing editor of the Claremont Review of Books.

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