

# Sovereignty cuts both ways, Downing Street has forgotten that

*Sovereignty cuts both ways, writes **Richard Rose**. Characteristic of British policy since the Brexit process began, Downing Street has forgotten that the EU and its member states are sovereign powers too. Its actions risk undermining trust in any future EU-British relationship.*

Downing Street has shown its belief in the power of parliamentary sovereignty by citing it to justify reneging on the Northern Ireland Protocol in the Withdrawal Agreement that it signed with the EU last autumn and that was endorsed by Parliament. It did so by invoking the traditional principle of the unwritten constitution: no Act of Parliament can bind a subsequent Act.

The reasons for not wanting to enforce the Agreement's conditions for regulating the movement of goods between Great Britain and Northern Ireland are both practical and principled. The procedures will impose costly burdens on firms engaged in trade and they will be an infringement on the unity of the United Kingdom. Boris Johnson was nonetheless prepared to accept these measures as the price of getting an Agreement on Brexit accepted by the EU. When Johnson won a majority last December in a new Parliament purged of pro-EU Conservative MPs, it promptly endorsed the Agreement and it became an International Treaty with the EU.

The principle of the rule of law means that both parties signing a Treaty are meant to act within its rules, even if doing so may impose costs and inconvenience. The clauses in the Agreement and its 585-page annexe ended the 'cake' strategy that Johnson had been pursuing, that is, keeping all the benefits of EU trade while gaining freedom from the obligation to respect the EU's trade laws. Michel Barnier, the chief negotiator for the European Commission, hailed the Treaty with the statement: 'The Withdrawal Agreement creates legal certainty where Brexit created uncertainty'.



The government bill on trade within the UK introduced on Wednesday demonstrated absolute British sovereignty: it contained clauses overriding Treaty provisions regulating trade between Northern Ireland and Great Britain. They had served their purpose and trying to enforce them would reveal how impractical and costly they were and inflame Tory and Northern Ireland MPs who have favoured no deal.

The government's chief legal advisor, Sir Jonathan Jones, took a different view and resigned. Parliamentary sovereignty must be exercised within the rule of law and could not be invoked in disregard of a Treaty that Parliament had approved. The only way that its fresh approach to Northern Ireland could be legally justified would be by getting the consent of the EU to a change or by having a new Act of Parliament repeal the agreement it had approved in January.

The relevant Conservative government ministers responsible for law enforcement, Robert Buckland at Justice and Attorney General Suella Braverman, put their commitment to Downing Street ahead of their ministerial responsibilities. The Northern Ireland Secretary Brandon Lewis instantly secured entry to the Oxford Dictionary of Quotations by telling the House of Commons that the new government bill would only breach international law 'in a very specific and limited way'.

Downing Street briefings are dismissing Barnier's views as typical of Brussels' concern with the law rather than with politics. It claims that this shocking show of British sovereignty will be accepted by the EU as a price that must be paid to maintain the EU's positive flow of exports to the UK. With the confidence borne of governing without the constraints of a written constitution, Boris Johnson and his colleagues are counting on Angela Merkel and Emmanuel Macron to tell the Commission to set aside their concern with measures that only affect 1.5 million people and accommodate Britain's doctrine of parliamentary sovereignty. Downing Street has ignored that the Irish government has a veto on any change in the agreement and that Micheal Martin, the Irish Taoiseach, has denounced the very specific way in which proposed changes would destabilize the economic relations and much else between Northern and Southern Ireland.

Characteristic of British policy since the Brexit process began, Downing Street has forgotten that the EU and its member states are sovereign powers too. Each is a Rechtsstaat, that is, a rule-of-law state. Given (their) recent national history, German Chancellors are particularly respectful of basic laws. The President of France enjoys wide powers because they are conferred by the French Constitution, not because of his personality or public opinion poll rating. Pragmatically, no French official would trust an agreement on dealing with the flow of goods and refugees between Calais and Dover if it could be altered at will to suit the convenience of Downing Street.

The EU has demonstrated its sovereignty by giving the British government a three-week deadline to withdraw the measure it has put to the House of Commons this week. Technically, this is not an infringement of the sovereignty of the British Parliament, for a draft bill is no more than a statement of what the government would like to become law. The Supreme Court demonstrated last September that it is prepared to over-rule Boris Johnson's wish to ignore an Act of Parliament. In less than 24 hours after the draft bill was published, the European Commission had prepared a draft statement expressing its extremely serious concern about the UK's proposed violation of their joint Agreement.

After meeting Michael Gove, the Cabinet minister working with Boris Johnson on implementing Brexit, the European Commission immediately [released a document condemning the bill](#). In an English understatement, it stated that if the proposed measure is not withdrawn by the end of September it will 'not be shy' of invoking the legal mechanisms and remedies in the Treaty to secure enforcement, and that trust in any future EU-British negotiation will be undermined.

The global reach of Britain was made evident in Washington within hours of the proposed change in the Northern Ireland protocol being published. Richard Neal, a Massachusetts Congressman with Northern Ireland grandparents and chairman of the powerful House Ways and Means Committee, issued a pointed reminder that the United States was a sovereign country too. He made clear that any measures undermining the Northern Ireland protocol risk wrecking the chance of a US-UK trade deal.

Richard Rose's newest Palgrave book is *How Referendums Challenge European Democracy: Brexit and Beyond*. He is Director of the Centre for the Study of Public Policy at the University of Strathclyde Glasgow.

*This article gives the views of the author, not the position of LSE Brexit, or the London School of Economics.*