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Deal or no Deal: Theresa May's Withdrawal Agreement and the Politics of (Non-)Ratification

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Abstract

The defeat of Theresa May's Withdrawal Agreement in the British Parliament is often ascribed to the prime minister's precarious situation in Parliament and her inability to negotiate a deal that satisfied domestic stakeholders. But the contradictions of Brexit were always going to produce a least-worst agreement and patterns of support for the deal were largely invariant to changes in its contents. Drawing on the literature on ratification, this article sets out an alternative explanation for the demise of the Withdrawal Agreement. It argues that the government's ability to threaten MPs with a 'no deal' outcome placed the executive in a strong position following the referendum, and that the primary source of ratification failure was the breakdown of this ability over the course of the negotiations. This account helps us understand why the government was initially unwilling to seek the support of stakeholders outside of the Conservative Party for its Brexit proposals.

Keywords: Brexit; Theresa may; withdrawal agreement; ratification; two-level games

Introduction

It is commonly assumed that Theresa May's ability to negotiate a Brexit deal which would pass the British Parliament was doomed from the beginning, a consequence of the prime minister's fateful decision not to reach out to opposition groups and her adoption of a hard bargaining strategy which hamstrung the negotiations (for example Larsén and Khorana, 2020: p. 865; O'Toole, 2020: p. 268; Schnapper, forthcoming). But the idea that the Withdrawal Agreement's (WA) failure can be traced back to these early mistakes does not stand up to conceptual or empirical scrutiny. The contradictions of Brexit would always preclude an agreement that could satisfy diverse preferences domestically, while the preferences of governing and opposition parties on Brexit were often determined by factors other than partisan loyalty. Moreover, support for the WA varied considerably across the May and Johnson governments, even as the contents of the agreement and the parliamentary arithmetic remained relatively stable.

This article argues that the changing nature of the ratification moment between 2016 and 2019 best accounts for the defeat of the WA in the British Parliament. Drawing on the scholarly literature on the ratification of international agreements it examines a number of determinants of ratification success, including the level of control governments have over the decision moment, how the vote is crafted, what the alternatives to an agreement are, and how these interact with the preferences of domestic veto players. The article claims that, contrary to prevailing wisdom, May was in a powerful position after the referendum, with considerable discretion over the nature and timing of the vote, a majority of legislators across both parties who feared a no deal outcome, and the presence – through Article 50 – of external constraints which credibly locked in this outcome as

the likely reversion point were a deal not ratified. Over the course of the negotiations, however, these advantages fell away as parliamentary actors gained control of the legislative process, as the threat of no deal became less credible and less effective against hardening Eurosceptic opinion, as the government's messaging began to oscillate, and as key assumptions regarding the Article 50 process fell by the wayside.

Methodologically, the article employs a process-tracing approach to reconstruct the politics of the decision-moment focusing on the specific factors relevant for ratification, including the government's strategy, the preferences of veto players, control of the decision-moment, the Article 50 process, and the presentation of alternatives to the agreement. By honing-in on specific aspects of the talks held to be significant for the likelihood of ratification by the theoretical literature, and by following changes in these factors within the policymaking process, a process tracing methodology allows for a highly focused approach which is able to link analytical claims to real-world developments, thereby helping us to make sense of the Brexit process and its empirical complexity (for example Beach and Pedersen, 2019). The article draws on a number of empirical sources, including media reports, academic works, and select government documents, as well as the recently published accounts of the talks by political insiders (Letwin, 2017; Rogers, 2019; Bercow, 2020; Timothy, 2020) as well as journalists and biographers (Shipman, 2018; Seldon, 2019; O'Toole, 2020; Pogrud and Maguire, 2020).

The argument sheds new light on the politics of ratification, which concerned the alternatives to the deal as much as the agreement itself, and which involved difficult trade-offs for opposition MPs as much as government legislators. It also offers a distinct timeline for May's loss of influence focused on the establishment of the 'meaningful vote', on specific changes to the ratification moment in late-2018, and on the rise of no deal sentiment – especially following the domestic backlash against May's July 2018 'Chequers Plan' for the future relationship (HM Government, 2018d) – as the most decisive moments. This helps us understand May's ostensibly surprising decision to eschew engagement with the opposition after both the 2016 referendum and the 2017 general election. Theoretically, the Brexit example highlights the dynamic nature of the ratification moment, which may be liable to change considerably over time and at the behest of domestic actors who are able to shape the circumstances of the vote to better suit their interests.

I. The Politics of (Non-)Ratification

There is now a significant literature on the Brexit negotiations, much of it from a two-level games perspective (for example Hix, 2018; James and Quaglia, 2018; Fabbrini, 2019; Hom and Beasley, 2021; Martill and Staiger, 2021). But the focus of these works is principally on the divergent bargaining styles of the UK and the EU, and the question of ratification emerges only indirectly, with explanations for the WA's failure emphasising the inability of the UK's bargaining strategy to obtain sufficient concessions to satisfy domestic demands (Martill and Staiger, 2021, p. 273; Schnapper, forthcoming) and the government's failure to engage with the domestic opposition (for example Figueira and Martill, forthcoming; Larsén and Khorana, 2020, pp. 864–5; Jones, 2019, pp. 51–4).

Yet, while these assumptions make intuitive sense, there are also limitations to what they can tell us about the WA's ratification failure. While the contents of an agreement

will never be unimportant, they are not the only factor actors are weighing up. Given the number of divergent, plausible outcomes of Brexit, any deal also has to be weighed up against the alternatives to an agreement, including the ‘no deal’ and ‘no Brexit’ scenarios, alongside other permutations. Moreover, the deal was always likely to be regarded as sub-par for both sides in the domestic debate, given the asymmetry in bargaining power across the English Channel, and the EU’s strong incentive to reject a bespoke agreement (Rogers, 2019, p. 7; O’Toole, 2020, p. 219). Problematic, also, is the emphasis on May’s parliamentary majority in existing explanations of ratification failure. While it is clear partisanship matters, it is also the case that Brexit cuts across partisan lines relatively easily. Many Conservative MPs readily withdrew their support from the deal, while many Labour MPs publicly considered supporting the agreement when no deal appeared the likely alternative, and the majority of Labour MPs subsequently supported Boris Johnson’s trade agreement for similar reasons (BBC News, 2019b).

To demonstrate the limits of both the WA and the government’s majority as determinants of support for the WA, this article focuses on the nature of the decision-moment itself, which is the subject of theoretical research on the politics of ratification. Only relatively recently has a distinct literature on ratification emerged (Haftel and Thompson, 2013; Campello and Lemos, 2015; Peake, 2017), although existing studies of international bargaining and two-level games have previously touched on the role of the ratification moment and its consequences for the conduct the negotiations (for example Putnam, 1988, pp. 435–41; Pahre, 2001; Slapin, 2006). In this sense, to speak of ratification as a discrete field of study is a misnomer, since the field is in its infancy and since much research on the topic has been conducted, indirectly, under the aegis of two-level games research. Nonetheless, the literature has produced key insights which can help us understand the conditions under which an agreement is more or less likely to obtain the requisite support domestically to avoid involuntary defection (Iida, 1996).

Specifically, the literature highlights a number of distinctive factors surrounding how the decision-moment is framed which can influence the likelihood of ratification independent of the nature of the agreement itself. *Ceteris paribus*, ratification is more likely under the following conditions: (1) First, when the executive has control over the nature and timing of the decision moment, which it can shape to its advantage (Pahre, 2001; Campello and Lemos, 2015: p. 1056). (2) Second, when the options presented to veto players are limited, or are presented in non-amendable (that is, ‘take-it-or-leave-it’) format, since this corrals diverse sets of preferences towards singular outcomes (Garrett and Tsebelis, 1996; Hobolt, 2006). (3) Third, when the reversion point – or ‘Best Alternative to a Negotiated Agreement’ (BATNA) – is distant from the ideal points of veto players, making it more costly for these actors to withdraw support (Slapin, 2006: p. 55). These factors, moreover, are mutually reinforcing. Executive discretion, for instance, may be used to facilitate a decisive vote against the backdrop of a damaging reversion point, since this tends to benefit the prospects of ratification.

Understanding how the decision-moment can affect the likelihood of ratification offers a useful toolkit for making sense of the WA’s failure, and a cursory examination of these factors in relation to Brexit suggests two things in particular: First, the executive is in a more powerful position in the early months of the Brexit process than the prevailing narrative acknowledges, since the government controls the timing and nature of the vote and since the Article 50 process locks in an irreversible reversion point (‘no deal’ Brexit)

which the majority of legislators are keen to avoid. Second, the factors responsible for the government's advantage deteriorate over the course of the negotiations, as parliamentarians seize control of the legislative agenda, as support for 'no deal' increases among key constituencies, as key assumptions of the Article 50 process are (successfully) challenged, and as the government alters its own strategy in ways which diminish the decisiveness of the vote and the clarity of the reversion point. These changes are complex and took various forms (see Table 1), but what they amounted to in practice was a marked deterioration between late 2016 and early 2019 of the government's ability to back MPs into a choice between a damaging 'no deal' Brexit and the deal on the table.

The remainder of this article demonstrates how the ratification process changed over the course of the Brexit negotiations by narrating the key moments during which the government's ability to offer a take-it-or-leave-it vote was undermined. The discussion proceeds chronologically, focusing initially on the advantages held by the government in the aftermath of the referendum, then discussing in turn the various changes which occurred in the early stages of the negotiations, in the run-up to the initial vote on 15 January 2019, and in the subsequent weeks of political crisis precipitated by this first rejection.

II. Articulating a Brexit Strategy, June 2016–June 2017

In the initial post-referendum period, during which May undertook to prepare for the forthcoming negotiations, the government was in an advantageous position in the domestic game. The government held considerable constitutional discretion over the timing of the Brexit vote, and could utilise this to manipulate the nature and timing of the decision in its favour. Moreover, the Article 50 process locked in a damaging no deal scenario at the end of the two-year negotiating window, a threat the vast majority of legislators were susceptible to. In short, while this initial phase was one of considerable domestic chaos in many respects, on the criteria contributing to the likelihood of ratification success the UK government arguably had little to worry about.

In the first year following the referendum vote on 23 June 2016, the prime minister focused on setting out her agenda for Brexit. May interpreted the Leave vote as a binding mandate on her government and promised to deliver Brexit 'come what may'. While she was not clear on the specifics of what she wanted, she was insistent that Brexit should deliver an end to free movement and the jurisdiction of the Court of Justice of the EU,

Table 1: Summary of principal changes in the decision-moment, 2016–19

	<i>Situation in Late-2016</i>	<i>Situation in Early-2019</i>
Control of decision-moment	Considerable executive discretion	Parliament becomes partial agenda-setter
Scale of 'no deal' sentiment	Minor grouping of Conservative MPs	Sizable faction of Conservative MPs
Government signalling	May's deal or no deal	May's deal, no deal, or no Brexit
Revocability of Article 50	Domestic consensus on irrevocability	Unilateral right of revocation established
Article 50 extension	High barrier to extension	Informally agreed by EU27
Timing of the vote	One-shot affair ('take-it-or-leave-it')	Repeated votes until acceptance

and that forms of membership via the ‘back door’, such as the Norwegian and Swiss models, were unacceptable (Timothy, 2020, p. 16). Ultimately, May was hoping to obtain a generous ‘bespoke’ deal for the UK that would exempt Britain from the political trappings of integration but would provide as few restrictions on market access and on the movement of goods and services as possible (O’Toole, 2020, p. 251). May’s vision for Brexit was spelled out in speeches to the party conference on 5 October 2016 (Timothy, 2020, p. 5) and at Lancaster House on 17 January 2017 (HM Government, 2017). Her rhetoric, including the much-maligned slogan ‘no deal is better than a bad deal’, was crafted to signal to both European and domestic audiences that May would be prepared to walk away if the UK did not get what it wanted (Brusenbauch Meislová, 2019, p. 684; Shipman, 2018, p. 11).

May’s approach to Brexit reflected a desire for tight control domestically (Shipman, 2018, p. 25; Timothy, 2020, p. 16). Politically, the prime minister’s principal aim was to keep the Conservative party together, and her focus clearly lay on obtaining a deal which would be palatable to moderates and Eurosceptics within her party, not one that would necessarily appeal to the opposition parties or the regions (Seldon, 2019, p. 120). Constitutionally, May sought to conduct as much of the Brexit process as she could through the government’s prerogative powers, which traditionally afforded the government considerable leeway in foreign affairs and international negotiations. The government presumed the right to notify the EU of its decision to withdraw, which would be successfully challenged in the Supreme Court’s *Miller* judgement (Eeckhout, 2018, p. 165), and envisaged sweeping executive powers for sifting through repatriated EU rules and regulations (Shipman, 2018, p. 13). On the substance of the agreement to be negotiated, the government promised a vote as early as October 2016 (BBC News, 2016), but insisted that the only options would be to accept or reject the deal and that the alternative would be ‘no deal’, and resisted pleas to place the vote on a statutory footing (Baldini *et al.*, 2018, p. 540). Many MPs openly questioned the government’s commitment to the vote as promised (*The Guardian*, 2017), and Brexit Secretary David Davis was later forced to concede the vote might take place after the UK had already left the EU, offering few prospects for meaningful scrutiny (*The Independent*, 2017).

When May triggered Article 50, with Parliament’s blessing, on 29 March 2017, she had already committed a number of strategic errors, including setting-off the two-year clock without a clear plan, failing to consult with domestic stakeholders, and boxing herself in with onerous ‘red lines’ (Rogers, 2019, p. 26), all of which would be highlighted subsequently when the deal failed to pass Parliament. And yet, in spite of these errors, the government remained in a strong position to ratify any agreement resulting from the talks: The government controlled the decision moment, which rested on a political commitment, not a statutory footing, and could be adjusted to suit the government’s purposes (Craig, 2017, p. 66). May indicated that the offer would consist only of a ‘take-it-or-leave-it’ vote on her deal, forcing legislators to weigh up the negotiated agreement against undesirable alternative outcomes (Heinkelmann-Wild *et al.*, 2020, p. 731). Meanwhile, the Article 50 process locked in a ‘no deal’ outcome in the event an agreement could not be negotiated (and ratified) in the time allocated. Both the government and the litigants in *Miller* had conceded Article 50 was ‘irrevocable’ (Eeckhout, 2018, p. 168) and the barriers to extension were high, requiring a unanimous decision among the (often fractious) remaining 27 member states. And the threat of a ‘no deal’ outcome was easy for

the government to wield, since the vast majority of MPs from both parties were, in principal, committed against this option. For Remain-supporters in particular, who were viewed by May's advisors to present the greatest threat to ratification (Timothy, 2020, p. 12), a 'no deal' Brexit was the worst possible outcome. Moreover, since British hard bargaining also rested on the threat of 'no deal' (Martill and Staiger, 2021, p. 263), the government could push the same message to different audiences simultaneously.

III. The Course of the Negotiations, June 2017–November 2018

Heading into the negotiations, then, the government's position vis-à-vis domestic veto players was not as weak as it would subsequently become. But the period June 2017 to November 2018 witnessed key changes which would shape the decision-moment in important ways. The 2017 general election, which produced a minority Conservative government, precipitated renewed mobilisation of May's critics on both sides of the Brexit debate and facilitated efforts to wrest control of the parliamentary agenda from the government, culminating in the so-called 'meaningful vote'. Brexit supporters, meanwhile, fearing a softer Brexit, cultivated support for a 'no deal' outcome among their ranks which would subsequently render the government's 'no deal' threat toothless against this integral constituency (Kettell and Kerr, 2020). Thus, by late 2018 the government had lost the ability to offer a last-minute vote on the agreement while the 'no deal' reversion point had become a useless weapon against holdouts in the governing party.

May had sought a general election to shore up her parliamentary situation prior to the start of the talks on 19 June. But a combination of poor campaigning, significant U-turns, and a Labour resurgence contributed to the loss of May's majority (Pogrud and Maguire, 2020, p. 66) and forced the Conservatives into reliance upon the socially conservative, and pro-Brexit, Democratic Unionist Party (DUP), with whom the prime minister negotiated a confidence-and-supply agreement (Letwin, 2017, p. 268). May's dependence on the DUP, it is true, introduced a new veto player, one with highly particular demands concerning the relationship between Northern Ireland and the UK, and this narrowed down her options when it came to specifying politically acceptable options for precluding a hard border in Ireland (O'Toole, 2020, p. 226). But many Conservatives held these concerns, too, and in any event May's ability to wield the 'no deal' threat when push came to shove meant she was not (yet) reliant solely on her own parliamentarians. Beyond the emergence of the DUP as a veto player, the election's most significant consequence was the expectation among many that May would need to chart a softer Brexit course (Shipman, 2018, p. 460), the product of a clear "counter mobilisation against Theresa May's vision of a hard Brexit" (Heath and Goodwin, 2017, p. 349). Although this push was unsuccessful, it led, ironically, to serious concerns among Brexit supporters that their demands would be watered down, and thus to greater vigilance from Brexiteers in the months ahead, as well as the return to frontline politics of Dominic Cummings to support the hard-line axis in the Cabinet (Shipman, 2018, p. 434).

While the government had seen off an early attempt to place the WA vote on a statutory footing, via an amendment to the Notification of Withdrawal Act (Craig, 2017, pp. 51–2), the issue re-emerged in December when the EU (Withdrawal) Act was placed before Parliament (Baldini *et al.*, 2018: p. 540). The former Attorney General, Dominic Grieve,

tabled an amendment on 13 December which prohibited the government from laying down statutes for implementing Brexit until Parliament had approved the deal, effectively preventing the government from offering a last-minute vote (*The Guardian*, 2017). The amendment passed 309–305 with 11 Conservative MPs crossing the chamber to defeat the government. In April 2018, when the Act came before the Lords, Viscount Hailsham tabled a stricter amendment affording MPs a say in the government's actions should the WA be defeated, which was approved in the Lords but rejected by the Commons (Baldini *et al.*, 2018, p. 540). Grieve tabled a further amendment on 11 June which would preclude 'no deal' and oblige the government to return to Parliament should the deal be defeated. The government responded with a new 'compromise' motion to defeat the amendment (324–298), with the compromise motion envisaging Parliament approving a 'neutral' motion without the ability to amend the government's proposals, meaning it would not preclude 'no deal' (BBC News, 2018a). As a result, Hailsham re-tabled Grieve's amendment in the Lords, extracting in the process 'written assurances' from Davis to Grieve that Parliament would get a say, before which the Commons defeated the re-tabled motion (*The Guardian*, 2018d). By holding the Withdrawal Bill hostage and collaborating across the chamber, moderate parliamentarians thereby succeeded in committing the government to a 'meaningful vote' on the WA and to spelling out its intentions if this failed, but they did not obtain the ability to instruct the government in this eventuality, nor to rule out a 'no deal' Brexit (Baldini *et al.*, 2018, p. 540).

As the negotiations progressed over the latter half of 2017 and 2018, significant areas of divergence opened up between May and the Brexit supporters in her party. While agreement was reached relatively easily on citizens' rights and the 'divorce bill', thorny questions concerning governance, the transition period, and the arrangements for the Irish border bedevilled the talks in the first half of 2018, leading to a series of climbdowns in which May was forced to accede to Brussels' position (Jones, 2019, p. 45; Timothy, 2020, p. 9). May's hard rhetoric and her deliberately high demands had occluded key differences between her and the Eurosceptics when it came to the price each was willing to pay for an agreement (Figueira and Martill, forthcoming; Shipman, 2018, p. 11). But disillusion with May's deal was not sufficient to defeat it, so long as these factions also wanted to avoid a 'no deal' Brexit. Yet, as the talks progressed, support for 'no deal' Brexit rose in the Conservative ranks, spiking at key moments in the talks (Kettell and Kerr, 2020). The rise of no deal sentiment changed the calculus among parliamentarians, very few of whom had initially supported 'no deal' (Rogers, 2019, p. 35), and established also a cadre of individuals for whom the 'no deal' threat was no longer seen as a problem. Indeed, much of the power of 'no deal' for backbenchers came from the fact that this position provided genuine leverage against May's own deal, which might otherwise be foisted upon them (Kettell and Kerr, 2020, p. 607).

The Chequers Plan setting out May's designs on the future relationship (HM Government, 2018d), presented on 6 June 2018, was a turning point in this regard, since it marked the moment Eurosceptics realized May's landing point differed significantly from their own (Shipman, 2018, p. 96). Although Cabinet gave its assent to Chequers, the proposals led to the resignation of Davis and Johnson. Meanwhile, the EU thought the proposals unworkable (BBC News, 2018b) while Labour claimed they failed the party's 'six tests' for post-Brexit arrangements (Pogrud and Maguire, 2020, pp. 64, 113). Chequers led to increasing attacks on May from the right, including from the

European Research Group (ERG) of Eurosceptic Conservatives, from Johnson – now freed from the trappings of ministerial responsibility – and from Nigel Farage, who announced a return to politics to oppose May's deal (Seldon, 2019, pp. 460–1). It was also after Chequers that 'no deal finally gained ascendancy to become the predominant, if not ... wholly hegemonic discursive frame within the Leave camp' (Kettell and Kerr, 2020, p. 605). Not all those who claimed to favour 'no deal' really wanted it: Some used the notion instrumentally to attack May's deal, some wanted her to deploy the threat more in the talks, some wanted to vote the deal down to make 'no deal' more credible, some genuinely preferred 'no deal' to May's *specific* deal, and some had always wanted 'no deal'. But prior to Chequers, only the latter group had considered 'no deal' a viable option; after Chequers the latter three groups did, with rising support for rejecting the deal to show Brussels that the UK was serious (Seldon, 2019, p. 496).

IV. Selling the Withdrawal Agreement, November 2018–January 2019

The talks dragged on until 14 November 2018 when the final agreement was published and the text approved by the European Council (HM Government, 2018c). May was under increasing attack from her own party during this time, but could still hope to run down the clock, calling the bluff of those feigning a preference for 'no deal'. And she believed she could rely on a number of opposition MPs if it came to a choice between the cliff-edge and her deal. But the prime minister also began to entertain new strategies, adapting her message for Conservative holdouts and accepting the possibility of a failed vote followed by a second successful one (Seldon, 2019, pp. 474, 517). These strategic changes, coupled with a number of other events, including further parliamentary activism and the establishment of a right of revocation for Article 50, would do much to undermine the prospects of ratification in the run-up to the vote. Essentially, from late 2018 the range of options available to legislators increased, altering the calculus from a 'deal or no deal' situation to one in which the alternative to a deal could either be a harder or softer Brexit, or potentially no Brexit at all. May's own rhetoric sought (and failed) to capitalise on this ambiguity, while Parliament's further usurpation of the agenda provided a means for actioning an alternative to the deal on the table.

While the credibility of May's 'no deal' threat was already challenged by the UK's poor contingency planning (Shipman, 2018, p. 514) as well as the prime minister's caution to avoid spooking business (Seldon, 2019, p. 497), until mid-November the government line pushed the choice between May's deal and 'no deal'. From 14 November May began to shift away from the threat of no deal towards a more complex combination of three potential outcomes: 'no deal', 'no Brexit', and her own deal (O'Toole, 2020, p. 225). Outside Cabinet, May pointed out that: 'When you strip away the detail, the choice before us is clear. This deal which delivers on the vote of the referendum ... or leave with no deal; or no Brexit at all' (HM Government, 2018a). Addressing Parliament the next day she argued 'the choice is clear. We can choose to leave with no deal. We can risk no Brexit at all. Or we can choose to unite and support the best deal that can be negotiated. This deal.' (HM Government, 2018b) The shift in discourse was parroted by supporters of May's deal, including Stephen Barclay, Liam Fox, Jeremy Hunt, and Michael Gove, and was clearly designed to scare the party right into voting for her deal. While it was not without foundation – Gove attributed his personal support to the rising prospect of no Brexit

(Seldon, 2019, p. 493) – it succeeded only in confusing the government's message and gave opposition MPs and some moderate Conservatives an incentive not to support May's deal.

Hoped-for support from Labour also diminished. Since September, prominent figures including Stephen Kinnock and Lucy Powell had indicated some Labour MPs would support May's deal (Seldon, 2019: p. 501). Labour MP Caroline Flint, a Remain supporter, stated publicly that if 'MPs are left with no more options on the table – just one agreement or leaving with no deal – I know where my duty lies. Not to help May, not to help the government, but to do what I believe is in the best interests of my constituents and the country' (*The Guardian*, 2018a). In fact, as *The Guardian* noted, many Labour MPs had flirted with backing May's deal on the basis that 'the alternatives of crashing out of Europe without an agreement or holding a second referendum would be unacceptable to many voters' (*The Guardian*, 2018b). And yet in mid-November few in the party believed this was the choice on offer. More likely, they reasoned, the failure of May's deal would lead to a general election, which was precisely what Labour hoped for (*The Guardian*, 2018b). The efforts of May and Chief Whip Julian Smith to lobby Labour MPs in Leave-supporting areas were thus largely unsuccessful (Poggrund and Maguire, 2020, p. 164). This did not stop opposition efforts to prevent 'no deal' from continuing, and Hilary Benn tabled an amendment on 30 November which aimed to do just that, claiming it would 'allow MPs who might otherwise have supported the prime minister because they are concerned about the risks of crashing out of the EU without a deal to vote against May's Brexit plan' (*The Guardian*, 2018c).

A further change in the post-Chequers period was the finding of the Court of Justice that Article 50 was unilaterally revocable. Both sides in *Miller* had claimed the process was irrevocable, but the consensus in legal circles was that Article 50 probably *was* revocable (Eeckhout and Frantziou, 2017, p. 711; Craig, 2017, pp. 64–5), although this had not been established in legal proceedings. Seeking to test the case, prominent Scottish politicians requested a preliminary ruling in the Court of Session on 3 October 2018. The ruling, handed down on 10 December, found that a unilateral right of revocation existed, meaning a departing member state could reverse its decision without obtaining the consent of the European Council, so long as this took place prior to the WA coming into force and represented a genuine decision to remain a member (Petrucci, 2018). For Remain supporters, the establishment of a right to revocation held out a further prospect of a return to the status quo. In response to the judgement, investment bank JP Morgan doubled the probability of Brexit not occurring from 20% to 40% in its forecasts, noting the decision 'makes no deal significantly less likely' since the 'possibility of revoking Article 50 potentially gives the Commons both an ability to stop the Brexit process and do so without removing the Prime Minister via a confidence vote or other forms of pressure' (Barr, 2018).

May's decision to postpone the first vote, scheduled for 11 December 2018, ignited concerns the prime minister was 'running down the clock' in order to present parliamentarians with a *fait accompli* (Washington Post, 2018), leading to further efforts to wrest control of the parliamentary timeline. On 8 January 2019, Grieve tabled an amendment (to an ostensibly non-amendable motion) requiring the government to return to Parliament within three days should the WA be defeated (*The Independent*, 2019). Bercow selected the motion for debate, against constitutional precedent, accusing May of 'blackmail', such that by 'deferring the vote for as long as possible in order to run down

the clock and then tell MPs that to avoid crashing out of the EU without a deal, the so-called ‘no-deal cliff edge’, they had no realistic option but to vote for hers’ (Bercow, 2020: p. 372). The motion passed by 308 to 297 on 9 January, preventing the government from playing for time after an unsuccessful vote (O’Toole, 2020, p. 256). Moreover, legislative activism was not the only factor diminishing the potential decisiveness of future votes. From early January, both sides in the negotiations had come to think an extension might be likely, given the strength of opposition to the WA, and on 14 January, one day before the vote, diplomatic sources indicated the EU’s openness to a ‘technical extension’ if the WA could not pass the Commons (Politics Home, 2019). May had also, by this point, committed publicly to staying on in the event the deal failed, not only since she regarded victory in the first vote as elusive, but also because she didn’t wish to tie the defeat of her agreement to the prospect of her removal from office. The result was that the 15 January vote, if it failed, would do much to reproduce the status quo.

The WA was defeated on 15 January by an unprecedented 202–432 margin (BBC News, 2019a). Yet, while the defeat was expected, it was not preordained, and reflected the changing politics of Brexit in the aftermath of Chequers and subsequent changes to the decision-moment. The government’s changing strategy in the run-up to the first vote not only made the choice for legislators less clear, but also increased the prospect of ‘no Brexit’, removing much of the potential leverage over Remain supporters. This was reinforced by the Court’s judgement on the revocability of Article 50 and the rapidly diminishing credibility of a ‘no deal’ Brexit, while the decision moment itself was transformed from an expected single-shot vote to a situation in which the status quo could more-or-less prevail. When the first vote came around, both sides were therefore convinced they could avoid their least favoured outcome, and the absence of a decisive vote allowed them to stick to their guns on this assumption (Seldon, 2019, p. 523).

V. Political Crisis, January–March 2019

The defeat in mid-January resulted from a combination of factors which together removed the decisiveness the government was hoping to rely on, such that MPs on both sides felt it best to hold out for a preferable outcome. But rather than working to re-establish a decisive vote, subsequent events in early 2019 would amplify this situation. Unable to convince opposition legislators to support a deal the government could not deliver, May doubled down on her insistence that either ‘no deal’ or ‘no Brexit’ would result, compounding the overall level of ambiguity. Meanwhile, public awareness of May’s intention to run down the clock precipitated additional efforts by parliamentarians to tie the government’s hands, ultimately contributing to May’s decision to request from the European Council an extension which would further allow both sides to hold out for a better deal.

The scale of the defeat on 15 January made it clear May would need support from the Labour benches to deliver her Brexit agreement (Pogrund and Maguire, 2020, p. 165), though among May’s advisors there was no agreement on how reliant the prime minister should make herself on the opposition. On 16 January May reached out to Jeremy Corbyn in the first serious effort at cross-party talks, pointing out that ‘the only way to avoid no deal is to vote for a deal’ (Pogrund and Maguire, 2020, p. 168). But Labour’s price now included both customs union membership and a commitment to a second referendum, and

was thus unpalatable for most Conservatives. Moreover, from Labour's perspective, since the deal was expected to be defeated in any case, supporting it made little sense (Pogrud and Maguire, 2020, p. 169). Bilateral approaches were also made to Labour MPs thought more likely to support the deal, including many of those in the informal Respect the Vote Group, numbering thirty-or-so MPs (Pogrud and Maguire, 2020, p. 170). But, in the end, it became clear the vast majority of Labour MPs would vote against the deal, since the opposition wanted to force a general election and believed the defeat of May's deal would bring this about.

With the opposition unamenable to her deal, May focused on uniting her own party, for which several options were being explored. One – the 'Malthouse Compromise' – envisaged a return to Brussels to renegotiate the backstop, its replacement with a 'technological' solution to the Irish border, and a 'managed no deal' in the event the EU27 refused to budge, but this option was rejected by May owing to its explicit support for 'no deal' (Seldon, 2019, p. 547). Instead, the prime minister lent support to the 'Brady Amendment' requesting her to return to Brussels to renegotiate the backstop. The amendment passed 317–301, causing consternation among the EU27 (Bercow, 2020, p. 377). May returned to Brussels to seek further concessions but, finding the EU27 unwilling to offer changes to the backstop, put back the next vote from late February to 12 March to allow more time for talks. The slow progress led both sides to further accuse May of 'running down the clock' (Hom and Beasley, 2021, p. 281). The ERG, for its part, believed May was only pretending to negotiate with Brussels to force her deal through at the last minute (Seldon, 2019, pp. 554–6), while Starmer accused the government of 'pretending to make progress' to present MPs with a 'binary choice' (*The New European*, 2019).

Failure to obtain movement on the backstop led to renewed efforts to engage Labour, but May and Smith found it hard to convince opposition MPs to back the deal. The government still hoped a decisive vote, at the last minute, would bring most Conservatives on board, requiring only twenty-or-so Labour MPs to cross the floor (Seldon, 2019: p. 560). In the meantime, May began to soften on 'no deal', indicating on 26 February she might be willing to rule it out should the 12 March vote go against her. Whether May regarded this as a sop to Labour or otherwise, it effectively undermined her leverage over the opposition. And it angered the Attorney General, Geoffrey Cox, who had been attempting to negotiate a text with the EU that would satisfy Conservative critics, and who blamed May's turnaround on 'no deal' for removing his leverage in Brussels (Seldon, 2019, p. 564). The ERG, fearing either a second referendum or a lengthy delay to Brexit, met with May on 24 February with a view to setting out the price of their support, which included movement on the backstop (Seldon, 2019, p. 549). Since this was not forthcoming, and since few Labour MPs were prepared to support May's agreement, when the vote came around on 12 March the result was a second defeat, albeit by a smaller margin of 242–391.

The second defeat, just weeks prior to the Article 50 deadline, ramped up efforts to preclude 'no deal'. May announced that Parliament would get a vote on whether to seek an extension or leave without a deal, but indicated she did not want to take 'no deal' off the table. On the evening following the second vote, an amendment put forward by Caroline Spelman and Jack Dromey ruling out a 'no deal' Brexit passed by four votes, while the following day a weaker motion on the same topic, introduced under duress by the government, but resisted by May and the whips, passed by 43 votes. The following

day a free vote calling for an extension passed 412–212 (Seldon, 2019, p. 574). The votes were not binding, not least since an Article 50 extension was the prerogative of the European Council, not the British Parliament, but in nominally committing Parliament against no deal these motions removed the last ounce of leverage the ticking clock might have given May. On 19 March the prime minister agreed to request a short extension from the EU, making her case to the EU27 two days later and obtaining a ‘technical extension’ until 22 May should the deal pass Parliament, and until 12 April should it not (Politico, 2019).

With a third vote was scheduled for 29 March, the date on which the UK was supposed to have left the EU, May’s strategy oscillated between different threats. Such vacillation proved the opposite of strategic ambiguity, and one Cabinet minister reported to Seldon (2019, p. 586) that: ‘She tried to keep all three doors open: no deal, deal, delay. She then flipped from to delay or deal, then to delay or no deal, then she went back to delay or deal. Then at the end she flipped back to no deal just as the Labour votes were coming over: Remainers thus thought by voting down her deal they’d get no Brexit, and the Leave side thought voting it down meant leaving with no deal.’ The shifting positions of actors did show that some leverage remained, especially on the right, now that ‘no deal’ was off the table, but that this leverage was difficult to wield. For instance, the ERG expressed interest in supporting May’s deal around 27 March, when the series of ‘indicative votes’ took place in Parliament, since they worried these would open the door to a softer Brexit. The ERG’s price was May’s willingness to leave office, but they deemed her half-hearted commitment to depart ‘sooner’ insufficient. Meanwhile, May’s consideration of leaving office scared the DUP, whose influence rested on her agreement with them, and who then committed to oppose her agreement (Seldon, 2019: p. 591). Reportedly, the ERG eventually came around to May’s deal, but failed to communicate this with the DUP and thus pulled their support at the last minute (Seldon, 2019, p. 596). In the end, with only five Labour votes and with the ERG and DUP committed against, the third – and final – vote on May’s WA was defeated 286–344 on 29 March.

Conclusion

May’s deal was defeated comprehensively on three occasions, but was this defeat preordained by the prime minister’s failure to reach out to domestic stakeholders or her inability to negotiate a sufficiently ‘good’ deal? The argument offered here is that defeat was far from inevitable, either from late 2016 or even mid-2017, since May’s initial leverage over the opposition was considerable, and since it was not possible to obtain a better deal (as Conservatives defined it) from Brussels. Rather, the article has argued ratification failure can be explained by the changing politics of the ratification moment itself and by the decline in the government’s ability to offer a decisive ‘take-it-or-leave-it’ vote against a damaging ‘no deal’ backdrop.

The argument has several implications for our understanding of Brexit. To begin with, it shows the dynamics of ratification concerned far more than the contents of May’s deal or the size of her majority. Political battles took place over the decision-moment itself and the alternatives on offer, and these often eclipsed specific concerns about the deal on the table, on both sides of the chamber. Though there was quibbling in both parties about the *kind* of agreement desired, all groups acknowledged the background threat of more

damaging options, which they feared more than any sub-par agreement. The argument also helps us explain some of the puzzling aspects of May's premiership, including the prime minister's unwillingness to reach out to opposition groups following the 2016 referendum and the 2017 general election, when the government held considerable leverage over moderate MPs. And it contributes to our understanding of the Brexit negotiations by accounting for the distinct dynamics of the ratification moment and, in so doing, helping to link together disparate political, constitutional and legal processes which have previously been studied largely in isolation from one another.

The Brexit case has implications, too, for our understanding of the politics of ratification. While existing research on the politics of negotiations has taken seriously the nature of the reversion point, the Brexit example shows that, under certain conditions, the reversion point can come to matter more to the various actors involved than the agreement itself, leading to a situation in which the most significant political battles cannot be understood without reference to both the deal on the table and the actors' estimations of the likely outcome in the case of rejection. This suggests further questions, moreover, about how actors infer what these outcomes may be, how they seek to shape and influence them, how they adapt their strategies in the face of considerable uncertainty, and how they can successfully signal specific outcomes as being more or less likely.

Another key finding is the dynamism to which this process is subject. Most research on ratification establishes variation across country cases, with the nature of the decision-moment treated as a relatively fixed category. Yet the Brexit example shows that the decision-moment can be shaped to a considerable extent over the course of the negotiations, as actors squabble over the appropriate conditions for deciding on whether to accept or reject any agreement. Moreover, much of this dynamism is led by domestic actors who, dissatisfied with what they regard as a circumscribed choice, take it upon themselves to alter the terms of the decision-moment. Rather than conceptualising veto players as actors constrained within existing decision-making processes, future studies may do well to interrogate the mechanisms - constitutional, political, discursive - through which domestic actors are able to influence the rules of game and alter the likelihood of ratification.

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