Brexit and labour governance: authoritarian innovations in the United Kingdom

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Abstract

The concept of authoritarian innovations encourages a focus on authoritarian change at the meso-level of governance. At the same time, this article argues that such meso-level change can be best understood by taking into account macro-level (authoritarian) developments. In the United Kingdom, Brexit has generated a broader macro-level authoritarian innovation, creating cumulative effects at the level of politics, governance and jurisdiction. This macro-level development is reflected in authoritarian innovation at the meso-level of labour governance. The article first explains how Brexit relates to three key drivers for authoritarian innovations in labour governance, namely general authoritarian inclination, neo-liberal policy and electoral populist motivations. It then analyses the main authoritarian innovations in labour governance adopted since Brexit, namely the approach to the legacy of EU protective standards and new policy measures limiting the right to strike. Using a discourse on democracy, acting against the 'undemocratic EU' and relying on 'the referendum mandate', UK governance post-Brexit is characterised by reducing pluralist processes and even parliamentary debate, enabling these authoritarian innovations. At the same time, due to the inherent contradictory forces inspiring Brexit, the long-term impact of Brexit on labour governance will likely remain modest.

On 23 June 2016, the United Kingdom (UK) decided to leave the European Union (EU), a decision that prompted the most radical overhaul of its constitutional design and polity since World War II. While criticising the EU for not being democratic, Brexit – the process through which the UK, as a sovereign country, exited from the EU – was proposed as a process of 'taking back control'. In practice, however, it led to a weakening of parliamentary control and pluralist politics. As such, although based on a referendum, Brexit can be described as a macro-level authoritarian innovation both in its design and, particularly, in its implementation by successive Tory governments.

This article investigates the extent to which Brexit has also led to authoritarian innovations in labour governance. On the one hand, the deregulatory ideology that inspired many of the key advocates of Brexit point in that direction, since Brexit presented a perfect opportunity to remove, or amend, the EU's protective regulatory framework. On the other hand, the populist and identitarian Leave Campaign also claimed to be defending 'British jobs for British workers' and strengthening the British welfare state against an undemocratic and unsocial Europe (Donogue and Kuisma 2021), potentially restraining Brexit's deregulatory agenda.

While the impact of the EU's regulatory framework on labour governance was in any case modest, the impact of Brexit should be assessed not simply in terms of removing that framework, but also in terms of the broader authoritarian shift in

governance style it has created and how this may affect areas of labour governance even not covered by EU regulation. In making this argument, this article first reflects on the concept of authoritarian innovations, stressing the importance of linking the meso- and macro- levels of analysis and tracing the process through which authoritarian innovations are adopted and implemented. Then, having situated Brexit as an authoritarian innovation at the macro-level of politics, governance and jurisdiction, it analyses authoritarian innovations in labour governance that developed in the context of – and as part of – Brexit. The final section of the article reflects on the relationship between macro-level and meso-level practice, arguing that authoritarian innovations at the meso-level of labour governance can only be properly understood when put in the context of wider macro-level political developments.

Theorising authoritarian innovations and labour governance

Authoritarian innovations in labour governance are changes in policy or practice that reduce participation and voice of unions at the level of policymaking or in the workplace (Ford and Gillan, this issue). Such authoritarian innovations are likely within authoritarian regimes but can equally occur within democracies. They might be the outcome of a core desire for authoritarian rule, but they might also be a side effect of other factors or developments. To analyse authoritarian innovations in labour governance in the UK, I will first discuss the concept of 'authoritarian innovation' and then distinguish different motivations for authoritarian innovation in labour governance.

The analytical lens of 'authoritarian innovations'

In addition to discussing radical regime change and the study of authoritarian personalities, the literature on authoritarianism has recently turned its attention to 'authoritarian practice' (Glasius 2018; Patapan 2022), a concept that provides a useful perspective on changes in practice within different regime types and different levels and processes of governance. As Curato and Fossati (2020) argue, this shift in focus from macro regime change to analysing authoritarian practice at the meso-level of governance allows us to identify authoritarian practices within well-established democratic states as well as within authoritarian regimes.

By introducing the term 'authoritarian innovations' – broadly defined as 'novel governance practices designed to shrink spaces for meaningful public participation' – Curato and Fossati (2020) draw a parallel with the burgeoning literature on 'democratic innovations', suggesting that it is time to enquire equally deeply into the multiple governance tools and practices of authoritarian rule. Their reference to 'innovations' also reflects what they describe as two general features of authoritarian change today: the often gradual and subtle strengthening of authoritarian practice (as opposed to radical regime change such as a coup), and the tendency to use the language of democracy (or general interest) to subvert democratic process (Curato and Fossati 2020: 1012).

This positioning of 'authoritarian innovations' as the conceptual opposite to 'democratic innovations' deserves a note of caution. In the latter, 'innovation' can simply mean 'change', but often also comes with the connotation of progress towards a normatively desirable objective, even if it remains a question for critical assessment whether democratic innovations actually improve democratic process. However, it is difficult to picture how 'authoritarian innovations' would constitute progress. A

minimal (and cynical) understanding of 'innovation' in this context could mean 'increased effectiveness' of authoritarian rule. Equally, one might think of novel tools of authoritarianism as more clever or cunning, for instance, when an authoritarian state moves from direct repressive measures to interventions that give the government equal levels of control while presenting itself as more legitimate or in respect of international norms, as has been the case in Cambodia (Ford, Gillan and Ward 2021). One might argue that, in such contexts, less violent or direct repressive measures are more desirable than brutal ones. However, the same authoritarian innovations would be a clear instance of democratic backsliding if applied in democratic regimes.

The idea of 'novelty' also needs some qualification. Curato and Fossati (2020) argue that modern authoritarian innovations are characterised by their gradual, subtle nature, and by their justification with the language of democracy. Yet even traditional examples of authoritarianism, from fascism to communism, used legitimating discourses to justify the use of a variety of non-democratic tools. In short, the subtle nature and justification mechanisms of modern authoritarianism are more a matter of degree than absolute novelty. What is new is the breadth of authoritarian mechanisms now in play, and increased pressure to justify them in terms of democracy, general interest, or rule of law. This is due to the increased complexity of modern governance, involving international organisations and non-state actors, as well as other forms of globalisation and, in particular, globalised trade, which means that states need legitimating strategies in relation to external actors. Hence, the concept of 'authoritarian innovations' is useful to analyse change in authoritarian practice, whereby the concept of 'innovations' (rather than just practice) refers to multiple tools and processes of authoritarian practice (Morgenbesser 2020), but equally to novel realities of modern and globalised multi-level governance.

In addition, it is necessary to distinguish between the effect and the underlying motivations of authoritarian innovations. As Curato and Fossati (2020) argue, unlike 'democratic backsliding', the concept of 'authoritarian innovations' allows us to consider the role of agency. However, they pay little attention to the motivations – for example, the retention or centralisation of power – of the agents of authoritarian innovations. The reduction of participatory process and accountability might also be driven by other motivations, for example, neoliberal ideology. While a mechanism can be judged to be authoritarian based on its effect rather than its underlying objectives, it is useful to investigate what the main driver of a particular authoritarian innovation is.

Equally, while Curato and Fossati (2020) emphasise meso-level changes, they are not very clear about what macro-level analysis this meso-level analysis should replace or complement. Yet authoritarian innovations at the meso-level, including in labour governance, do not happen in a vacuum. Rather, they are likely part of a broader pattern of government behaviour or even regime change. Thus, while it is important to shift the literature's attention to the meso level, it is equally important not to overlook the relationship with the macro level. While Pepinsky (2020) argues that scholars of regimes should consider how authoritarian innovations may generate new logics of rule, it is equally important to explain meso-level authoritarian innovations through broader macro-level developments.

Finally, analysis of authoritarian innovations benefits from a two-step analysis that focuses both on the substance of new authoritarian practices or tools and on the

processes through which such practices are adopted, which are often themselves characterised by attempts to circumvent democratic procedures.

Motivations for authoritarian innovations in labour governance

There are three main reasons why governments undermine industrial relations and attack unions. Firstly, authoritarian rule might be the primary motivation for authoritarian innovations in labour governance. Authoritarian governments seek to undermine the space for opposition and dissent, as well as participatory pluralist or consociational politics. The voice of labour, whether as protest or consultation on labour related policy, as well as pluralist (and autonomous) industrial relations or participation at the workplace level are likely reduced as part of a broader pattern of authoritarian governance. While such attacks on labour governance can be part of proper radical regime change based on repression, they can equally occur as part of a broad spectrum of authoritarian innovations that take place gradually and are justified with reference to democratic narratives. In such cases, meso-level authoritarian innovations in labour governance coincide with authoritarian innovation at the macro level.

Secondly, the reduction in voice for labour might be the result not of a general inclination for authoritarian rule but of an ideological orientation regarding the role of the state and the market. For instance, a neoliberal approach might respect the traditional institutions of parliamentary democracy while at the same time seeking to reduce participatory processes in labour governance. A growing body of literature on 'authoritarian neo-liberalism' (Bruff 2014, Biebricher 2020, Gallo 2021) shows that, while Hayek's idea of neoliberalism is based on liberal rather than authoritarian state institutions, in reality, the nexus between neoliberalism and authoritarianism is much more complex.

Not only do some authoritarian movements and governments rely on neoliberal policies, promoting free trade and retreat of the state on economic governance, but equally the neoliberal view of politics – possibly inadvertently but still systematically – is drawn toward authoritarian politics as it is seen as the most direct route to realise the neoliberal objectives (Biebricher 2020). Given neoliberalism's focus on limiting state regulation over the market, authoritarian innovations are then highly likely to emerge in the field of labour governance – although decades of neoliberal governance and depoliticisation have created the conditions in which reactionary forces more broadly thrive (Collison and Manfredi 2019).

Thirdly, political attacks on unions may be (purely) driven by electoral politics. 'Electoral populism' (Peters and Pierre 2020) seeks to polarise society as a way to seek (re)-election, depicting some groups as 'the enemy' of 'the people', (Dumitrescu 2022). Such groups often include 'the elite', 'experts', immigrants, environmentalists, or the LGBT community. Workers as an homogeneous group are less likely to be defined as 'the enemy', since that would deprive populists of too many votes. However, unions and employer organisations can be described as part of the despised 'elite', while populists may seek to create division between different types of workers: strikers versus non-strikers, public sector versus private sector workers, and unionised versus non-unionised workers.

These three motivations for the reduction of voice of labour often overlap, but not always. Attacking labour for electoral reasons does not by definition lead to specific policy initiatives reducing their voice in the workplace or even in policymaking.

Conversely, a democratic government may exclude industrial relations actors from policymaking processes but try to do so without polarizing public debate on the role of unions. Equally, a government with neoliberal convictions may undermine the voice of labour, but not necessarily undermine other political institutions. Authoritarian governments, meanwhile, may seek to undermine pluralist decision-making but not have a particular agenda to reduce labour protections. For example, populists may rely on worker votes (Mosimann, Rennwald and Zimmermann 2019) and thus be reluctant to reduce worker rights; but at the same time may seek to undermine industrial relations as organised labour may constitute a powerful source of dissent (Ward and Ford 2022).

From macro-level to meso-level authoritarian innovations

To understand authoritarian innovations in labour governance in the UK, it is important to place it in the context of the wider radical change in governance and constitutional design that has characterised the country since Brexit, which constituted the most important change in UK governance since World War II. Not only did Brexit remove the UK from the jurisdiction, political institutions and regulatory framework of the EU, it also involved a change in internal governance practices and ways of doing politics, as exemplified by the successive Tory governments (Theresa May July 2016-July 2019; Boris Johnson July 2019-August 2022;Liz Truss August-October 2022; Rishi Sunak October 2022-July 2024). As such, it is necessary to first explain how Brexit constitutes an authoritarian innovation at the macro level, before analysing the relationship between Brexit and meso-level authoritarian innovations in labour governance.

Brexit as a macro-level authoritarian innovation

Brexit did not need to be an authoritarian process. In fact, intuitively one might expect Brexit to be a democratic innovation rather than an authoritarian one. It is a principle of international law that countries that have joined an international organisation are free to leave that organisation, and the Treaty on European Union confirms that a member state can withdraw from the EU 'in accordance with its own constitutional requirements' (Article 50 TEU). The latter was realised via a referendum, mandated by Parliament. Moreover, in terms of substance, the EU has often been criticised for having a democratic deficit, due to its opaque, complex and remote decision-making, and weak European public sphere. As such, 'taking back control' to the national level might then appear a democratic innovation.

One can question some of the premises of this critique, namely whether democracy at a supranational level should be measured by the same benchmarks as within the nation state (Moravcsik 2002) and whether, in the absence of the EU, decision-making would return to the national level or rather be transferred to different transnational settings providing less accountability than the EU. Moreover, critiques of the EU's democratic deficit are often based on ideal type normative benchmarks of democracy that assume that individual countries live up to those expectations (Smismans 2021). It is beyond the scope of this article to compare how the EU might well score better on some elements of democracy, for instance, in terms of checks and balances or transparency, compared to some of its member states. The focus here is on how Brexit, with its claim to take back control for democratic reasons has not led to more democratic governance.

What makes Brexit a macro-level authoritarian innovation is the way in which democratic discourse, both in its attacks on the EU and through its use of the 'referendum mandate' has been used as a cover for reductions in parliamentary debate and pluralist politics within the UK. In fact, authoritarian elements are identifiable both in the process leading to the UK's exit of the EU (the referendum and the process until Brexit day) and in the new governance reality it created. The Brexit referendum has been described as the perfect example of everything that can go wrong with a referendum (Offe 2017), from financial irregularities in campaigning, to disenfranchisement of many people in the referendum vote, to the high level of disinformation.

When discussing Brexit as an authoritarian innovation, the focus is not on the legitimacy of the referendum as such, but on Brexit as a long-term process involving new governance measures and political practices characterised by a reduction of voice, participation and democratic control. The authoritarian nature of Brexit becomes more apparent through the cumulative effect of these changes at the levels of *politics*, *governance* and *jurisdiction*, even when they fall within the strict contours of legality and individually could be considered as mere dips in democratic standards. At the level of *politics*, Brexit operated as a crude instrument of power politics using the 'referendum mandate' to silence debate and impose a form of Brexit that was in many aspects the opposite of what the Leave Campaign had promised.

The referendum did not offer a choice between different versions of Brexit, but only between EU membership and leaving the EU. Moreover, the choice presented was a false one, since the Leave Campaign claimed that leaving would guarantee full regulatory autonomy while still providing unrestricted access to the EU's single market, which would never be acceptable for the EU. According to Bellamy (2023) the referendum was, despite all its shortcomings, still legitimate because some level of disinformation is common in referenda, and the process was embedded in representative democracy. However, this argument only holds for the legality of the referendum as mandated by parliament. The problem is not simply the level of disinformation in the referendum but that the subsequent Conservative governments reduced the space for public, parliamentary and participatory process to define the nature of Brexit.

Theresa May's government, which came to power following the referendum (but without election), even attempted to implement the referendum result without parliamentary involvement; it required intervention of the Supreme Court to ensure the latter. Instead of broadly consulting on the form of Brexit, May was sealed off by her main advisors (Perrior 2017), and hardly consulted with Parliament, even her cabinet, let alone with the broader public. Referring dogmatically to the referendum outcome with the slogan 'Brexit means Brexit', the tone was set for a narrow clique of Eurosceptic members of parliament to silence the debate and define the path towards a 'hard Brexit' behind closed doors (James and Quaglia 2018; Dunlop et al. 2020), leading ultimately to stalemate in parliament and May's resignation. Importantly, also, this 'hard' version adopted had little resemblance to the version promised in the referendum, as it prioritised regulatory autonomy over access to the EU's single market, thus creating more economic costs and deregulatory risks than what had been promised.

In a constitutional system based on the primacy of parliamentary sovereignty, this eroding of parliamentary debate is remarkable, particularly given the level of

disinformation around the referendum. Moreover, contrary to Bellamy's argument that Brexit was *post factum* embedded in parliamentary democracy, subsequent elections failed to provide a forum to debate the content of Brexit in any informed way. The 2017 election, which focused on May's version of social conservatism against the increasingly left oriented socio-economic programme of Labour under Jeremy Corbyn, did not offer the opportunity to debate and vote on the desired form of Brexit (Vaccari et al. 2020). In the 2019 election, the slogan 'get Brexit done' was used not to encourage discussion of Brexit's form, but to further silence debate. Based on the claim that the referendum mandate had to be realised without providing space to discuss its content, Boris Johnson obtained a solid majority, paving the way for his government to rush through a 'hard Brexit'. Moreover, appeal to the referendum mandate and 'get Brexit done' functioned also politically as a way to distract attention from other policy topics while delivering a solid majority to pass through parliament such policies with little resistance.

This dampening of parliamentary debate on the content of Brexit and on policy more broadly coincided with a more authoritarian approach to *governance*, particularly in the delegation of a wide range of powers to the government with limited parliamentary control, a lack of respect for participatory and consultative procedures, and a disregard of 'good governance' procedures aiming at evidence-based decision-making. Hence, Brexit did not bring more democratic governance at the national level. In fact, the post-Brexit approach to dealing with the legacy of EU law reflected the UK's penchant for executive centralism (Castree 2010; Ward and Ward 2021), taking it a step further with extraordinary delegation of powers to ministers with limited parliamentary control.

Brexit also created a governance void in relation to practices that had developed while the UK was part of the EU, such as devolution, which had been facilitated by EU membership (Keating 2022), with the government using the exit from the EU to try to re-centralise power in Westminster (Wincott *et al* 2022). In addition, post-Brexit governance has been characterised by a move away from 'good governance' measures promoted by the EU, such as broad pluralist consultation and evidence-based policymaking. A populist narrative against experts (Clarke and Newman 2017) translated into a governance practice that regularly ignores evidence tools such as impact assessments, reflexive learning based on broad consultation or even hierarchical learning within the bureaucracy (Dunlop et al 2020).

Finally, Brexit functioned as an authoritarian innovation at the *regulatory/jurisdictional level*. While railing against the undemocratic EU in order to obtain regulatory autonomy, Brexit freed the government from external checks and balances against potential abuses of power and respect of fundamental rights and rule of law provided under the EU's judicial framework. The UK was always reluctant about EU human rights protections, as shown in its (successful) attempts to water down the contents of the Charter of Fundamental Rights of the EU. It was no surprise that when the Theresa May government provided a mechanism to (provisionally) retain EU law post-Brexit, the Charter was explicitly excluded from this 'roll-over'. Similarly, Brexit created an opportunity to remove participatory requirements and accountability mechanisms applicable to EU member states in particular policy areas, including labour governance. Given though that a legislative framework put in place aimed to 'assimilate' EU law into national law rather than radically remove it, a close

assessment of the extent to which EU guarantees were actually removed is required in specific policy areas, as I do for labour governance below.

In short, Brexit was not a radical regime change such as a coup since it occurred within, though at the margins, of parliamentary democracy. Rather, it constituted a macro-level authoritarian innovation – based on gradual change at the levels of politics, governance and jurisdiction and making use of the language of democracy, and justification in the popular will expressed in a referendum – to reduce plurality in parliamentary and public debate and governance practice. While this might fit with populist understandings of democracy or ideas of 'illiberal democracy' (Mudde 2021), the concept of authoritarian innovation allows identifying the reduction of voice and participatory process, as well as check and balances one expects in liberal democracies.

Brexit and motivations for authoritarian innovation in labour governance

Just as Brexit did not need to be an authoritarian process, it neither necessarily had to lead to authoritarian innovations in labour governance. In fact, the EU is often criticised for not giving the same weight to social objectives as to its market integration aims so, at least in theory and in legal terms, leaving the EU and the constraints of its 'economic constitution' could have created space for more democratic forms of labour governance.

The EU's regulatory framework for labour governance is modest, which meant that the impact of Brexit in terms of removing that framework was also relatively modest (Teague and Donaghey 2018). Most EU regulatory standards on labour policy relate to individual rights rather than collective rights; even then, they remain limited in scope and leave member states flexibility by using Directives and minimum harmonisation as regulatory tools. Regulatory standards regarding industrial relations are mainly rights of information and consultation set out in general, or regarding health and safety at work, or in the specific context of transfer of undertakings or collective redundancies, as well as for transnational European companies.[1] In addition, the EU actively promotes 'social dialogue' at cross-sectoral (tripartite and bipartite), sectoral and company level, but except for the binding social dialogue procedure on EU social policy and some level of conditionality regarding industrial relations infrastructure for new member states, it respects national procedural autonomy (Smismans 2012).

As a result, authoritarian innovations in labour governance are well possible within EU member states. On the eve of the referendum, for instance, the Cameron government adopted the most restrictive intervention on the right to strike in a generation, while the UK was still part of the EU. The Trade Union Act introduced new ballot thresholds and notice requirements; tightened controls over picketing and protest; weakened unions' political funding; created new investigative powers for the Certification Officer; and limited the check off and facility time in the public sector. It was authoritarian particularly in its way of weakening the capacity of civil society to seek political representation, its reliance on direct state coercion on union action, and in justifying some of these restrictions in terms of internal union democracy (Bogg 2016). Ironically, Brexit tempered somewhat the authoritarian nature of the Trade Union Act, since the government softened some of the original intentions of the Bill in an attempt to gain worker votes in the referendum (Ford and Novitz 2016, Bogg 2016).

At the same time, Brexit dovetails with the three motivations for authoritarian innovation in labour governance identified above, namely neoliberal ideology, a general inclination towards authoritarian governance, and electoral populist behaviour. Its impact should therefore be measured not simply by the potential removal of EU regulation, but also by how its changes in politics and governance affect labour governance. The neoliberal inspiration of Brexit (Slobodian and Plehwe 2019, Cornelissen 2021) was the key driver for most funders of the Leave Campaign. From their perspective, Brexit was above all an opportunity to push through a deregulatory agenda, including in the field of labour governance.

But Brexit did not simply operate as a potential way to get rid of the EU's (modest) regulatory framework on labour governance. At the level of politics, the referendum result was subsequently used to consolidate a majority in parliament to impose a harder, more neo-liberal version of Brexit than what was promised in the campaign. In this respect, the Leave Campaign foregrounded the identitarian, nationalist and anti-migration motivations of Brexit rather than its free-market neo-liberal orientation (Rosamond 2019, Slobodian and Plehwe 2019, Worth 2017), with promises about 'British jobs for British workers' or even a greener UK environmental policy, keeping at bay a strong public deregulatory discourse.

Yet, once the 'get Brexit done' election strategy delivered Boris Johnson a solid parliamentary majority, the neo-liberal inspiration of Brexit became more to the fore, finding its expression in the 'hard Brexit' set out in the Trade and Cooperation Agreement with the EU. The subsequent Liz Truss government unapologetically built on the UK's 'regained sovereignty' to push through the neo-liberal deregulatory hard Brexit strategy, but had to resign after only two months in office due to the reaction of the financial markets. The Truss debacle and economic downturn exhausted the appeal of the Brexit narrative. However, this did not mean neo-liberal inspired authoritarian innovation disappeared under Sunak. In fact, while May, Truss and Johnson were too busy with the macro dimension of Brexit to focus properly on the meso level of labour governance, Sunak adopted the most explicit attack on labour governance by way of the Strikes Act. Thus while Sunak continued to profit from the solid parliamentary majority that the 'get Brexit done' election delivered, the Brexit narrative against 'the elite' was replaced with a (more classic) neo-liberal discourse positioning the general interest against striking workers.

The impact of Brexit on labour governance was due not just to its neoliberal design, but also to its broader tendencies towards authoritarianism. A general move away from pluralist politics at the macro-level was also evident in the field of labour governance, both in the process leading to Brexit and in its implementation. The main unions and employer organisations were both opposed to Brexit (Gordon 2016), but their voices were virtually unheeded.[2] Their limited involvement post-referendum in the design of Brexit and the new trade agreement with the EU was even more striking given the socio-economic consequences at stake and relevance of their expertise.

For Theresa May in particular, an exclusionary approach towards unions and employer organisations was more related to her black-and-white thinking and closed approach to information (Benedict Dyson 2024) than support for a neo-liberal hard Brexit. While she had campaigned against the latter, she considered it her role as Prime Minister to dogmatically implement the 'referendum outcome', as interpreted by her main advisors and under pressure from 'hard Brexiteers' within her party. In a different way, Boris Johnson would ignore the voice of both unions and employer

organisations. He had little regard for dissent (Seldon and Newell 2023: 401), and trade unions and employer organisations were not conducive to his strategy to gain and consolidate power by conveying the impression he was willing to deliver (hard) Brexit at any cost (Brusenbauch Meislová and Bujard 2024: 281). This insular governance, with poor consultation and a lack of evidence-based policymaking, also affected the adoption of new authoritarian innovations in labour governance post-Brexit, even into Sunak's tenure as Prime Minister.

Also evident was an element of electoral populism, namely a strategic polarisation of industrial relations for electoral gain. The Leave Campaign and successive Conservative governments, but in particular the Johnson government, depicted both unions and employer organisations as elites wanting to override the popular will expressed in the referendum. Invoked to win the referendum and subsequent elections, this populist position against unions and employer organisations dovetailed with their exclusion from governance practice and with the neoliberal inspiration of Brexit.

Authoritarian innovations in labour governance under Brexit

Authoritarian innovations in labour governance since Brexit have taken the form of two main initiatives, namely government's handling of the legacy of EU (labour) regulation and further inroads into the right to strike. The neoliberal inspiration of Brexit led to fears that the government would make a bonfire of EU (labour) regulation. Rather than a proper bonfire, there has been a more gradual authoritarian innovation by the creation of a procedural framework that has allowed the government to remove or amend EU labour governance over time while avoiding parliamentary and broader social control. In fact, the strongest post-Brexit restriction on labour governance so far is on the right to strike, on which the EU has no regulatory competence. This may seem a paradox. Yet, Brexit still played a role in facilitating this authoritarian innovation, not by removing the EU's regulatory framework, but via the political and governance dimensions of post-Brexit governance. It appeared also politically less damaging to restrict the right to strike than removing EU labour regulation, which would have been directly in opposition to the Leave promise that Brexit would not lower EU labour standards. Yet, restrictions on strike action, could hardly be justified with the 'defending British workers' narrative that characterised the Leave campaign. Instead there was a shift to a more confrontational narrative about workers.

A bonfire of EU legislation? From retaining to assimilating EU law

The UK's exit from Europe required dealing with some 5000 EU-derived pieces of legislation adopted through more than 40 years of EU membership (Department for Business and Trade 2023b). But, despite the Leave campaign's complaints about the EU's regulatory burden and the 'undemocratic' origin of these rules, the May government did not want to create a regulatory void. The European Union (Withdrawal) Act 2018 (Withdrawal Act), therefore, 'took a snapshot' of EU legislation at the moment of exit and translated it all into the UK legal order. All these norms remain in force until they are amended or fully removed.

This approach did not satisfy Brexit hardliners, who dominated the short-lived Truss government. During his two-month stint in the role of Business Secretary of State, Jacob-Rees Mogg introduced the Retained EU Law (Revocation and Reform)

Bill, colloquially known as the Brexit Freedoms Bill. With some minor exceptions, the Bill set a sunset clause on all retained EU law. Unless the government explicitly decided otherwise, retained EU law provisions would be removed by 31 December 2023. The Bill was highly criticised for creating legal uncertainty, and for the extraordinary power grab it would entail as ministers would be able to decide, out of parliamentary control, on the fate of more than 40 years of legislation in a vast range of policy areas. And yet, Rees-Mogg defended the Bill as 'restoring parliamentary sovereignty' against EU undemocratic decision-making, while criticising its opponents for not respecting the referendum. Yet, after the fall of the Truss government, subsequent Secretaries of State gave in to the widespread criticism.

The final Retained EU Law (Revocation and Reform) Act (RRA) adopted on 29 June 2023 did not contain a general sunset clause. However, it removed more than 600 regulatory instruments, as well as the EU Charter of Fundamental Rights and directly effective EU rights based on EU treaties, directives and general principles of EU law. Most importantly, it provided an extraordinary delegation of powers to the Government to remove or amend what is left of retained EU law and did away with most procedural scrutiny safeguards usually provided when legislation provides a regulatory mandate to the government, such as the requirement to provide an explanatory statement for ministerial action and a minimum consultation period for parliamentary committees to comment on the proposal. Moreover, the Act only provided for parliamentary control via the 'negative procedure', which means scrutiny only happens if one of the Houses actively asks for it (as opposed to the 'positive procedure' where scrutiny applies automatically). Given its wide scope of application, this gave the government unprecedented power. In fact, the only substantive limit to the Ministerial power to amend retained EU law is the RRA's requirement that new provisions should not impose tax or increase the regulatory burden. Hence, while the spectacle of a bonfire was ultimately avoided, ministers now had nearly uncontrolled power to remove retained EU law gradually or amend it in ways that promote deregulation. What would be left after all this removal and amendment would according to the Act be named 'assimilated EU law' in a rather symbolic move to suggest a more profound process of purification than the approach to retained EU law set out in the 2018 Withdrawal Act.

In the labour domain, the backlash against the Truss government's attempted bonfire inspired the subsequent Government of Rishi Sunak to a more cautious approach to avoid criticism on the neoliberal design of Brexit. None of the key EU regulatory acts protecting labour standards, such as on working time, parental leave or participation and information of workers, was included in the list of legislation removed by the RRA. However, the RRA did revoke the protection of the EU Charter of Fundamental Rights and general principles of EU law (such as non-discrimination). The government also started to make modest use of its powers under the Withdrawal Act and RRA in areas of labour governance.

With the Employment Rights (Amendment) (EU Exit) Regulations 2019, it introduced minor amendments to European Works Councils (EWC), which are a requirement for transnational worker consultation under EU law for companies with at least 1000 employees and at least 150 employees in more than one EU country. The amendment led some companies to believe that the EWC requirements were no longer applicable to multinational companies with central management in the UK. In a court case involving Easyjet, which is headquartered in the UK, the Court of Appeal

concluded though that the Regulations 2019 were 'possibly not the best thought through piece of legislation' but that they did not remove the EWC requirements. Future revision is likely given the ambiguity of the regulation, in which case it will be clearer whether the government properly intended or not to reduce consultation requirements. However, the episode illustrates how post-Brexit governance, such as enabled by the Withdrawal Act and RRA, based on hasty government action without consultation and proper parliamentary control, has led to poor regulatory outcomes.

Other initiatives on labour governance regarding assimilated EU law have been announced in the government's recent consultation on Retained EU Employment Law reforms (Department for Business and Trade 2023). Changes proposed affect labour standards in relation to calculation of holiday pay and record keeping on working time as well as consultation requirements in the context of transfer of undertakings. These changes would not fully remove EU regulation but would make some amendments. For instance, it would reduce voice for labour by reducing the scope of application of one of the requirements of the EU Transfer of Undertakings Directive, namely businesses with fewer than 50 employees would no longer be obliged to inform and consult with elected representatives in the case where the transfer affects less than 10 employees.

Hence, the RRA has not created a proper deregulatory bonfire, although the picture might have looked very different if the Truss government had stayed in power and the 'Brexit freedoms bill' had been adopted in its original design. However, it does exemplify the broader authoritarian inclination of Brexit governance. Instead of protecting workers, the RRA has given unprecedented power to the government to remove and amend EU regulation with virtually no parliamentary control or pluralist process. Under the banner of democratisation, the RRA served as an authoritarian innovation by establishing a procedural framework that allowed further reduction in participatory labour governance over time.

Limiting the right to strike by allowing agency workers to replace strikers

The most direct restriction of voice of labour in the post-Brexit period was, however, in a field where the EU has very little reach, namely the right to strike. The EU does not have regulatory competence in this area. Although the EU recognises the right to strike in its Charter of Fundamental Rights, the possibility to rely on this to enforce that right at the national level is limited, as the Charter only applies when EU law is implemented – and the case law of the Court of Justice of the EU has often prioritised the defence of the single market over a strong protection of the right to strike (Novitz 2016). With Brexit, even this level of protection has been removed as the UK has made the Charter non-applicable.

The main impact of Brexit on facilitating restrictions on the right to strike was thus not achieved by removing the EU's regulatory framework. As explained above, the authoritarian innovation of Brexit does not only work at the level of jurisdiction, but also at the levels of politics and governance. The politics and governance dimensions of Brexit as an authoritarian innovation are reflected in two government initiatives limiting the right to strike, namely, a 2022 Regulation allowing the use of agency workers replacing strikers and a 2023 Act defining required minimum levels of public service provision.

Since 1976, under regulations made pursuant to the Employment Agencies Act 1973, UK employers had not been permitted to use employment agency workers to

replace workers who are on strike. The Conservative Manifesto of 2015 undertook to remove this ban in the context of other restrictive measures that would be included in the Trade Union Act. While the measure was supported by the Confederation of British Industry, the initial consultations on the issue revealed not only expected opposition from unions, but also from some recruitment sector trade associations, which were not convinced that employment agencies could provide skilled workers at short notice (High Court 2023; para.59-63). Moreover, as noted above, despite the neo-liberal design of Brexit, the Brexit referendum campaign, with its claim to protect British workers, had a moderating effect on some anti-worker measures. The idea to remove the ban on the use of agency workers replacing strikers was therefore paused. However, by 2022 the Brexit context had changed. The 2019 'get Brexit done' election had provided the Conservative Party a very solid majority, providing more space to impose less popular policies while silencing parliamentary debate. When a wave of strikes hit the country in 2022, the Sunak government did not hesitate to introduce the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations of 13 June 2022, which lifted the ban on the use of employment agency workers to replace striking workers. This regulation displayed all the features of post-Brexit authoritarian governance, characterised by insular decision-making and ignoring consultation and expertise, as evidenced by the fact that it was quashed in the High Court for not meeting procedural requirements (High Court 2023).

The Court decision did not consider the regulation's substance – and did not analyse whether the use of employment agency workers would breach the right to strike. Rather, it took issue with the process through which it had been adopted. The Secretary of State had failed to comply with the legal requirement under the Employment Agencies Act 1973 to consult with the bodies representative of the interests concerned when adopting regulations based on this Act. He had not engaged with responses to the 2015 consultation, which were predominantly negative, failed to organise a new consultation in 2022 and to present a proper impact assessment required for parliamentary scrutiny. Indeed, an email exchange between the ministerial department and the Secretary of State reported in the judgment reveals that the government rushed the measure prior to the impeding summer recess, explicitly excluding further consultation or proper consideration. The government was, moreover, warned by the ministry that its immediate beneficial impact would be minimal and potentially inflame an already highly volatile industrial relations situation, while unlikely to be a viable option for the foreseeable future given a shortage of skilled agency workers.

The judge concluded that 'the reasons for this degree of haste can only be guessed at' and declared the government to be acting both unlawfully and irrationally (High Court 2023, para.191). While the judgement did not use the term 'authoritarian', the key arguments leading to the quashing of this decision cited common features of authoritarian innovations in post Brexit UK governance, namely a lack of consultation (in this case of unions and employer organisations), the disregard of evidence, and the disrespect of the constitutional settlement on devolution, in this case not taking into account that Wales has its own regulation forbidding the use of agency workers to replace strikers.[3]

Limiting the right to strike by minimum services level regulation

In a further response to the biggest wave of strikes since the Thatcher period, the Sunak government also introduced a new Act, constituting the most serious limitation on strike action since the Trade Union Act. The Strikes (Minimum Services Level) Act is said to guarantee a 'minimum service' in six particular sectors; health, fire and rescue, border security, nuclear decommissioning, and education, which remarkably even includes higher education.

While it can be argued that minimum service restrictions on strike action are in line with the International Labour Organization (ILO)'s understanding of the right to strike, such restrictions must be exceptional and provide procedural guarantees for the involvement of unions and employer organisations. The Strikes Act does not provide such guarantees, and its authoritarian nature resides both in the extensive power given to the government and the way the role of unions is defined in this context. The Act does not define 'minimum service', confirming the post-Brexit governance pattern to give sweeping discretion to the executive. Moreover, in contravention of the ILO approach, unions and management are not given a proper role to define minimum service within their sector, or not even explicitly required to be consulted on any further government action implementing the Act. The Act also builds on the Trade Union Act in the sense that it further penalises industrial action, providing for excessive sanctions for both individual workers and unions.

When strike action impedes the delivery of the required 'minimum service', employers can send work notices for individual workers to deliver that 'minimum service'. Individual workers lose their protection against dismissal if they do not respect that notice. Moreover, the Act requires unions to take 'reasonable steps' (again not defined in the Act) to ensure their members comply with the work notices. If they fail to do so, they can face damages up to £1million, and all workers involved in the strike (even those not individually called to work in the notices) lose protection against dismissal. Although the Act requires employers to consult unions on the definition of the work to be done in the work notice, as well as the number of employees required for it, the employer can simply ignore the union's input. Subsequently unions are required to enforce the work notices, against their own members and strike action. The requirement for unions to act against their own interest, the disproportionate sanctions, and the lack of definition of 'minimum service' and 'reasonable steps' create a highly uncertain and threatening environment discouraging strike action.

This authoritarian innovation in labour governance was adopted through a process that reflects well the broader authoritarian governance style post-Brexit. The solid majority gained through the 'get Brexit done' election was used again to pass the Bill through Parliament at breakneck speed, silencing debate in the House of Commons and refuting all but one of the amendments proposed in the House of Lords. The social partners were not consulted, and an impact assessment was only presented when the Bill had moved from the House of Commons to the House of Lords (Katsaroumpas 2023).

While the Strikes Act, as well as the 2022 Regulation, correspond with the authoritarian Brexit governance pattern, the narrative to justify these acts is increasingly moving away from the Brexit discourse. Invoking 'us' (including workers) against the 'undemocratic and unsocial EU' is difficult as a narrative to justify strike restrictions. Moreover, the economic downturn started to undermine the credibility that Brexit is to the advantage of workers. The narrative, therefore,

becomes one of 'us, the general public' against 'strikers disrupting social cohesion'. While unions and employer organisations were part of the despised (European) 'elite' at the start of Brexit, the polarising focus is now shifting to workers directly, creating division between types of workers (unionised vs non-unionised, public vs private sector) and between workers and the general public. Such a narrative was already present in the parliamentary debate on the Trade Union Act (Bogg 2016), but becomes now a considerably broader public discourse that fits the government's electoral populist strategy to create new 'enemies', including in particular also environmental groups, where the anti-EU and anti-immigrant position seems to have run its course in guaranteeing electoral success. At the same time, while the Brexit narrative had been crafted in terms of national sovereignty and democracy against international norms, the government made a remarkable effort to justify the Strikes Act with reference to ILO norms and minimum service regulation in other countries, both accounts of which, however, have been highly misleading or simply wrong (Bogg 2023, Ewing and Hendy 2023, Katsaroumpas 2023).

Conclusion

Authoritarian innovations are often authoritarian both in substance – in the way they shrink the space for participation – and in their process of adoption. This is clearly illustrated by the authoritarian innovations in labour governance analysed in this article. The 2022 Regulation and the 2023 Strikes Act, as well as the first initiatives under the RRA were all adopted with limited or no parliamentary debate, no social partner consultation and contempt for participatory procedure and evidence-based policymaking. While the RRA stopped short of the bonfire of EU regulation and labour governance standards imagined by the Truss government, it created an authoritarian procedural framework that facilitates future deregulatory action on such standards. It was politically less risky to lower labour governance standards where EU protection is limited, such as on the right to strike. This does not mean that Brexit was irrelevant in this case: while not directly related to the removal of the EU's regulatory framework, the 2022 Regulation and 2023 Strikes Act reflect the authoritarian features of Brexit at the level of politics and governance.

These cases illustrate the key argument of this article, namely that the concept of authoritarian innovations allows us to look at the diversity of practices at the meso-level, but that this can best be done by taking macro-level authoritarian developments into account. In the UK context, the motivations for authoritarian labour governance can be best explained by considering the broader context of Brexit, a macro-level authoritarian innovation based on a legitimating narrative against an 'undemocratic EU'. Brexit inspired authoritarian innovations in labour governance through its neoliberal drivers, its broader pattern of authoritarian governance and electoral populist agitation against social partners as part of 'the elite'. However, in the medium term its impact on labour governance remained modest since the EU's regulatory framework on labour governance was ultimately assimilated in UK law, not removed. While the new procedural framework made it possible to remove further protections, the impetus to do so faded as Brexit as a macro-level authoritarian innovation ran its course.

It is no longer possible to blame 'the undemocratic EU' for policy failure and the 'referendum mandate' can no longer be invoked in attempts to consolidate power and rush policies through parliament. The economic downturn following Brexit ultimately

undermined the credibility of the Brexit narrative, including claims that it would benefit workers. The government's attempt to formulate a replacement narrative focused on its alleged efforts to defend 'the people' against striking workers and unruly protesters more generally was unlikely to provide electoral success. As the July 2024 elections removed the Conservatives from government and brought Labour back into power, it becomes further unlikely that the opportunity offered under the RRA is used to reduce former EU labour governance standards, particularly as even on employers' side there is not a real demand for it. Moreover, Labour has pledged to repeal both the Trade Union Act 2016 and the Strikes Act 2023 (Labour 2024), removing the most substantive authoritarian innovations in labour governance of 14 years of Tory government. The impact on labour governance of Brexit and its authoritarian innovation at the macro-level will then not so much be apparent in changes in the regulatory framework, but by the economic consequences of a hard Brexit, which was pursued ignoring the voice of trade unions and employer organisations, first when opposing Brexit in the referendum, and second when expressing preferences for a 'softer' Brexit during the trade negotiations with the EU.

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Notes

[1] Information and Consultation Directive 2002, the European Works Councils Directive 2009, the Transfer of Undertakings Directive 2001, the Collective Redundancies Directive 1998, and the Framework Directive on Safety and Health at Work 1989.

[2] This was, though, partially of their own making. Union support for the Remain campaign was muted because of their late engagement, resource constraints, fear of alienating members and in some case lack of priority (Fitzgerald et al. 2022). Employers feared to be labelled as 'elite' and trusted that Remain would win, or if that was not the case, the comfortable Conservative majority in Parliament would mean that Brexit would not be too problematic for them (Feldmann and Morgan 2021a).

[3] The judge did not directly consider whether the Government had or not the power to override Wales on this matter, but the fact that the Government had not properly investigated this issue was an element in the judgement's conclusion that the Government had failed to provide proper consultation and sufficient evidence for its action.