**The Right Against the Rule of Law?**

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**Introduction**

Over the course of Boris Johnson’s leadership, the Conservative Party’s commitment to the ‘rule of law’ has come repeatedly under scrutiny. Among the most recent examples of this has been around the ‘Partygate’ scandal, in which Johnson and various Conservatives were found to have breached legal regulations on social mixing during the Covid-19 pandemic. But by far the deeper – and more recurrent – set of accusations have concerned the Party’s attitude towards international legal obligations. Much of the condemnation of the Nationality and Borders Bill, as well as Priti Patel’s proposals to ‘outsource’ responsibility for processing and settling asylum seekers in Rwanda, has occurred in legal terms. With the government accused of violating international legal norms on the protection of refugees.

In 2020 a storm of criticism erupted in relation to the then Internal Market Bill – which of course passed into law – since it included sections which ‘broke’ international law,

albeit in, according to Brandon Lewis, a ‘very specific and limited way’.[[1]](#footnote-1) In the ensuing debate, the Conservative Party came under attack from both legal and political actors, who argued that in breaching international law, the Conservative Party had damaged both its own and Britain’s reputations. These criticisms were particularly stinging from Party grandees, who alleged that such a break from the ‘rule of law’ represented a repudiation of longstanding conservative values.

Defenders of the Conservative Party for their part couched their positions in a manner befitting an undergraduate law student who has just discovered an IR realist or Critical Legal Studies approach to international law. Such approaches emphasise the ‘political’ and ‘constructed’ nature of international law, as well as its indeterminacy and contestability. In such traditions, law is not simply a set of rules with transparent and clear meanings. Instead, the meaning of any given legal provision is inherently unclear, as such the struggle to ‘fix’ a particular legal meaning is always the object of political struggle. It is quite unusual – particularly in a ‘mainstream’ political party – to see such positions *openly* pursued and debated by mainstream politicians. The usual manoeuvre is for these actors to lean into the indeterminacy of the law and argue that their particular interpretation is the ‘correct’ one.

What is important to note is that these examples are simply the most prominent and recent examples of the Johnson–led Conservative’s run-ins with the rule of law. The Overseas Operations (Service Personnel and Veterans) Bill was criticised for undermining the international legal prohibition on torture and – once again – breaching the rule of law.[[2]](#footnote-2) Indeed in August 2020 the Home Office referred to those attempting to defend the legal rights of asylum seekers as ‘activist’ lawyers abusing the legal system.[[3]](#footnote-3) This once again generated outrage, with Adam Wagner, a prominent human rights, lawyer arguing that the Conservative Party has set itself against ‘law, and the rule of law’.[[4]](#footnote-4)

In fact, such accusations have been a regular occurrence since Boris Johnson acceded to the leadership of the Conservative Party. Much of the more recent furore is highly reminiscent of the debates over the prorogation of Parliament, where the Supreme Court ruled that Boris Johnson’s advice to the Queen to prorogue Parliament for five weeks was unlawful. What Conservative backlash there was – recalling the 2016 *Daily Mail* headline following the decision in the *Miller* case that declared judges as ‘Enemies of the People’ – was once again characterised by hand wringing, with William Hague writing in *The Telegraph*:

For the desperate and understandable desire to deliver an exit from the EU has led to ill-advised actions that appear to undermine another fundamental attribute of any conservative party: an unshakable attachment to the rule of law.[[5]](#footnote-5)

Hague’s thinking is typical of how people have come to understand the Johnson–led Conservative Party’s attitude towards the ‘rule of law’. In essence, the story goes, the desire to achieve Brexit as quickly and easily as possible – in the face of a recalcitrant 48 per cent and a state apparatus that was not so keen on leaving – turned the Conservative Party against its traditional rule of law values. This enabled Boris Johnson – and his former co-conspirator Dominic Cummings – to bring their distinctively ‘radical’ ideas to the top of the Conservative Party, presaging what Will Davies, in the *New Statesman*, has called the ‘rise of the rule breakers’.[[6]](#footnote-6)

Whilst there is certainly something to this story, a little caution is needed. Very frequently stories about some new, particularly virulent strain of conservatism cover up the deeper forms of continuity in conservative thinking and practice, a point frequently made by Corey Robin.[[7]](#footnote-7) Certainly, Brexit has figured prominently – although not exclusively – in Conservative ‘departures’ from the rule of law, but this is hardly unprecedented. The two previous Conservative Prime Ministers – Theresa May and David Cameron – both also gained a great deal of rhetorical value attacking legal institutions. A particular target of ire for both was the European Court of Human Rights (ECtHR), and the Human Rights Act (HRA). Cameron attacked the ECtHR for ‘distorting human rights’[[8]](#footnote-8) in 2012 and proposed a ‘British Bill of Rights’ in place of the HRA in 2015.[[9]](#footnote-9) May quite famously simply *lied* about the fact that an immigrant to Britain had been prevented from deportation since they owned a cat.[[10]](#footnote-10)

In this sense, the Johnson government arguably represents the culmination of a trend within the Conservative Party as opposed to a break. The question, then, is where does this trend come from and what does it illustrate about the contemporary Conservative Party?

**Legitimacy Through Defiance**

One obvious question that arises here, particularly in relation to the Internal Market Act, but also more broadly, is why the Conservative Party has been so willing to obviously and directly flout international law. As noted above, the traditional position of a government in the case of a potential breach of international law would be to push as hard as possible on the indeterminate nature of the law, stressing the defensibleness of its own interpretation. Indeed, behind the scenes one imagines that government lawyers are hardly willing to simply say ‘Oh yes, we have breached the law’.

Take, for example, the events around the invasion of Iraq and the War on Terror. Despite widespread condemnation of the international legality of the 2003 invasion of Iraq, the Blair government continued to insist that the intervention was legally justified. One can observe a similar situation with the Cameron government’s defence of the legality of military intervention in Syria in 2011. Indeed, shifting focus, even the Bush administration’s monstrous torture in Guantanamo Bay was underscored by thousands of pages of detailed legal arguments. It appears that in the ‘clashes’ described above, the Conservative Party deliberately *chose*, on a rhetorical level, to position themselves wholeheartedly against particular legal regimes or institutions.

As such, the overarching feature of all of the Conservative ‘clashes’ with the rule of law has been their particular political character. In each of these instances, the Conservative Party has taken some particular policy or issue that it claims is in the British interest – Brexit, mistreating prisoners, dealing with refugees etc. – and noted that this policy or issue is being *blocked* by the distant forces of law and legal institutions, especially international law. Accordingly, it is only through confronting those institutions that the Party is able to achieve its objective and secure British interests.

This pattern fits very closely with one described by the international legal theorist Nathaniel Berman in his text ‘Legitimacy Through Defiance: From Goa to Iraq’. In that article, written in the shadow of the Bush administration’s international legal rhetoric around the 2003 Iraq invasion, Berman sought to understand why governments would sometimes deliberately set themselves against (international) legal norms. For Berman:

Those who seek legitimacy through defiance endeavor to turn their legitimacy–deficit, the deficiency of their actions when measured against the requirements of international law, into a surplus–legitimacy, a super–legitimacy gained through eliciting admiration of their courage in proceeding despite legal strictures.

By setting themselves against such legal structures, Berman argued, governments are able to position themselves as bold, resolute and courageous. As he noted in relation to Iraq, the Bush administration used such language to contrast itself to the conservative and timid structures of the international legal order. This enabled Bush to argue that – in invading Iraq – it was the US itself which embodied justice, as against recalcitrant international legal structures.

Such behaviour is always a particular *choice*. Given the indeterminacy of (international) law, it will always be possible for state personnel to find some legal arguments with which to justify their behaviour. Even those states most condemned by the ‘international community’ tend to respond not by acknowledging the breach, or by impugning the institution, but rather by legally supporting their conduct. The turn to legitimacy by defiance therefore is always a political choice, as opposed to a response to a lack of availability of arguments, or a weak legal hand.

This insight is vital because the Conservative Party simply does not *have to* adopt such a posture when responding to claims that it has violated the rule of law. What Berman’s analysis helps us understand is why the Conservative Party has made such a choice. The Conservative Party gains a form of legitimacy – as a bold and courageous actor – by setting itself against certain legal institutions and regimes. However, in order to fully understand this we need to go a little deeper, it is necessary to understand the specific articulation of such legitimacy and its imbrication within a wider political and economic context.

What is very specific about the Conservative Party’s clashes with law and legal institutions is how it has deployed ideas of the ‘majority view’ and ‘common sense’. In all of the above described circumstances, the Conservative Party has asserted one of these two values – arguing that distant and unaccountable bodies have blocked their actualisation. In the case of the Internal Market Bill, the argument was that a majority, common sense view that there should be no borders within the United Kingdom is being blocked by the unaccountable EU and a distant international law. In the attacks on the ECtHR the ‘common sense’ of the British people (and their desire to deport immigrants) were counterposed to an out of touch, unaccountable body. Even the British judiciary is understood as an unaccountable, elite body blocking the will of the majority to ‘get Brexit done’. And of course, more generally, the whole of Conservative rhetoric around migration – particularly in the case of refugees – has been framed by the idea that common-sense policies to ‘control’ or ‘ease the burden’ have been blocked by a combination of ‘activist lawyers’ and various international bodies.

Is this just a typical case of ‘democracy’ (or ‘politics’) being invoked against law? There is certainly an element of this. But that cannot really account for why the Conservative Party has adopted such a position so consistently. It also cannot explain the particular form these confrontations take. To really understand this phenomenon it is necessary to reflect upon the changing political economy of British capitalism, and the Conservative Party’s relationship to this political economy.

**Abstract Domination**

One of the most important insights of the Marxist tradition is the way that capitalism both exists as a product of human activity and appears to stand outside of that activity. In capitalist systems economic processes occur ‘behind the backs’ of the very people whose activity constitutes the system as a whole. In what Marx variously described as ‘alienation’ and/or ‘commodity fetishism’, the economic processes of capitalism appear to take place beyond our conscious control. Under capitalism the fulfilment of social needs and objectives is always mediated through the pursuit of profit and the accumulation of capital, meaning that these needs and objectives are only ever fulfilled ‘accidentally’ through the contingencies of the market.

As William Clare Roberts has argued in *Marx’s Inferno*, this arguably creates a double sense of domination under capitalism. On the one hand, everyone in a capitalist society has their life dominated by the unaccountable, inaccessible force of the market. People depend on this market to reproduce the conditions of their existence – in wages, or wealth, or assets – yet cannot exert meaningful individual control over that market. One can do *everything* ‘correctly’ and still lose out owing to the seemingly capricious forces of the market. On the other hand, capitalism also occasions forms of more particular dependence. Those who do not own the means of production become dependent on those who do – that is to say workers become dependent upon their employers (and to some degree, in some social democracies, the state).

This sense of alienation and lack of control has often been fertile ground for political discontent under capitalism. To some degree it fuelled the growth of the workers and socialist movements, but more generally lies at the root of much political discontent and change. The forces of the left devote their energies to increasing the level of conscious social control over the economy whilst the forces of the right seek to legitimate the *status quo* as one in which people can in fact control their own destiny.

The political transformations that began in the interwar period and culminated in Keynesianism were precisely an attempt to impose greater social control over capitalism, without fundamentally overcoming its logic. In a sense, the Keynesian settlement – both internationally and in Britain – was based on a combination of the rising threat of the organised working class, socialist, communist and anti-colonial movements, a desire to defend the continued existence of the capitalist economy and relatively buoyant rates of profit. In the advanced capitalist world, this enabled an accord whereby a reformist left was able to foist a greater degree of intervention and control on the capitalist class and its direct representatives.

In Britain, of course, this took the form of the 1945 Attlee government, which was able to impose a Keynesian political-economic settlement until the 1970s. This settlement was accepted by the Conservative Party. However, over the course of the 1970s and 1980s this settlement broke down – owing to successive crises and struggles – and out of this breakdown emerged what has been called neoliberalism.

In the neoliberal ordering, institutions of intervention and coordination– nationalisation, collective bargaining, etc. – were replaced with the dictates of market competition. In Britain it was Margaret Thatcher’s Conservative government that was responsible for the ‘roll back’ of the institutions of Keynesianism. A crucial part of that government’s rhetorical strategy in this endeavour was to cast the institutions of Keynesianism as distant, elitist and inefficient bureaucracies that were unable to respond to people’s real needs. It is important to note, of course, that the Thatcher government did not preside over a ‘shrinking’ of the state, but rather the reconfiguration – and in fact intensification – of state power. However, the government was able to mobilise a genuine sense of alienation from the institutions of the Keynesian state, as Stuart Hall put it:

‘Thatcherism’ succeeded on the back of a deep and profound disillusionment among ordinary people with the very form of social democratic ‘statism’ … That type of ‘statism’ implied a very distinct view of the state itself – as a centralised bureaucracy, a neutral beneficiary, which at best did things to and for people, but which was substantively outside their control. It was largely experienced in negative and oppressive ways. As a set of real, lived practices, this form of ‘statism’ implied a particular way in which classes and other social forces were represented politically – at several removes from the actual exercise of power, through the occupancy of parliamentary power, increasingly distant and remote from the real conditions of life. … It represented the dominated classes as passive recipients, as clients of a state run by experts and professionals over which people exercised no real or substantive control.

Insofar as Keynesianism sought to maintain the logic of the market at the same time as tempering it, it necessarily continued with the alienating and distant logic of capitalism, and added to that forms of bureaucracy. Such alienation became particularly acute in the context of an economic crisis that once again exposed the lack of ‘control’ people had over their lives. Against this, Thatcher recast the *market* as the best way to give individuals control. This was matched in material terms by the limited redistribution of privatised assets to individuals – in the form of the ‘right to buy’ council housing, and the shares in newly privatised industries.

In this way, the Conservative Party was able to tap into the alienation and discontent generated through (managed) capitalism, and channel it into their political project. At the same time, however, the Conservative government engaged in various forms of ‘law-sterity’ in which economic and policy choices were increasingly codified into legal obligations.[[11]](#footnote-11) The aim was to encode the logic of neoliberalism at a legal level, so as to force local governments – and future national governments – from departing from neoliberal policies. Thus, the Thatcher government highly centralised local government powers, legally hemmed in trade union organising, and was – initially at least – highly supportive of integration into the EU on a free market basis. Here Thatcher was not alone, with international and regional institutions also heavily juridifying the neoliberal economic model (via the World Trade Organisation, International Monetary Fund, World Bank and international investment law).

The irony here – as well as the source of future problems – should be clear. On the one hand, Thatcherism, and neoliberalism more generally, mobilised a sentiment of dissatisfaction with distant, alienated bodies exercising control over people’s lives. On the other hand, they both increased the role of the market – and its attendant caprices – in governing people’s lives *and* embedded this rule through a series of inaccessible and distant legal and institutional forms.

**Taking Back Control**

Putting together these elements gives us a crucial understanding of the Conservative Party’s attitude towards the ‘rule of law’. Vitally, the Conservative Party does not evince an explicit disdain towards the ‘rule of law’ as such. In this respect it is instructive to note that the response to ‘Partygate’ has explicitly not been to attack or disavow the rules. Instead, the Conservative Party has turned against specifical legal regimes and institutions as stymying the ability of the state to achieve its objectives. It has made an outright turn against these institutions precisely where the tension described above has reached a fever pitch.

The neoliberal settlement inaugurated by Thatcher remained relatively stable until 2008. It was taken up by New Labour, who combined it with some expansion in public spending, some redistribution and a relocation of public sector jobs to areas that had been hit by the Conservative Party’s deindustrialisation. The promise of asset wealth in the form of home ownership, and the expansion in the availability of credit gave people a limited sense of control over their own lives.

However, since the 2008 financial crisis this settlement has been thrown into disarray. The promise of rising asset prices in the housing market has become unstuck, and the prospect of ‘getting on the property’ ladder remains a distant prospect for ‘generation rent’. The 2008 crisis was thus a double whammy. It reasserted in stark terms that our lives are governed by unpredictable market forces beyond any of our control *and* it swept away those mechanisms which served to give some kind of semblance of control to individuals.

The challenge for the Conservative Party since 2008 has been to articulate a politics that deals with this dissatisfaction whilst maintaining its neoliberal political-economic programme – i.e. the dominance of markets and the maintenance of law–sterity. In a sense it was this spirit that animated the Cameron government’s austerity programme. By likening the national budget to a household budget it was possible to argue that the economic situation was one that was within our collective control.

Austerity, however, could not work on its own terms. Growth rates remained at best sluggish and, after a certain point, it became impossible to make ‘politically acceptable’ cuts (i.e. those that would not impact upon the Conservative Party’s social base). This was combined with a leftwards shift in the Labour Party: initially with Miliband and then decisively with Corbyn. Both of these Labour leaders sought to appeal directly to a sentiment that people’s lives were being dominated by out of control market forces. This was worsened by the fact that the austerity project itself was undergirded by an intensification of law–sterity.

This is the political context in which both the May and Johnson governments found themselves. Part of their response to this was to move away from the more explicit commitments to law–sterity that had been advanced by David Cameron and George Osborne. Thus, in October 2018 Theresa May pledged to ‘end austerity’ at the Conservative Party conference[[12]](#footnote-12) and the Johnson-led Conservative Party has pledged a package of ‘levelling up’ and state dirigisme. The latter case has been intensified by the response to the Covid-19 pandemic, which has obviously involved – albeit in a limited way compared to much of Europe – an expansion of state support and power. Indeed, in 2020 Johnson pledged that following the end of the Covid-19 pandemic, there would be no return to austerity.[[13]](#footnote-13)

For some, these changes have signalled a wholesale abandonment of austerity, and perhaps even neoliberalism. However, caution must be exercised here. Whilst it is true that the rhetoric has changed, and certainly there have been policy realignments, there has been no great reinvestment of public funds, or rebuilding of Britain’s welfare state and infrastructure. The Chancellors of both May and Johnson – despite their Prime Ministerial rhetoric – have all been fiscally conservative in orientation, with Rishi Sunak reluctantly increasing public spending during the pandemic before passing a particularly austere budget. This orientation represents the broader political-economic outlook of the Conservative Party’s social base.

This is particularly important in the context of law–sterity. Whilst the Conservative Party’s *national level* targets are relics of the Osborne era, at the level of local government and at the level of international obligations, austerity – and neoliberalism – remain codified at the juridical level. Ultimately, therefore, the core contradictions continue to exist, and – in some respects – have sharpened. There has not been a sufficient shock to dislodge the Conservative Party’s – and frankly the British state as whole – commitment to a neoliberal model of capital accumulation premised on a class–power of finance, an economic model structured around financialisation and privatisation and an attempt to foist the economic burdens of crisis onto popular classes.

It is in this context that the Conservative Party’s relatively longstanding opposition to (certain) supranational institutions took on a particular power. Ramping up this rhetoric was a way to mediate the tension between mobilising popular discontent over a lack of control in their own lives and continued support for neoliberalism and its institutional requirements. Here, the Conservative Party’s jibes against supranational institutions took on particular power – they represented a way to re–channel discontent at an alienated and distant political-economic system as against a particular grouping of ‘elites’, as opposed to any wider systemic critique of neoliberalism.

This was one reason that the Brexit project became especially attractive to the Conservative Party. The rhetoric of Brexit would allow the mobilisation of discontent with an alienated, out of control system, directed *elsewhere*, at the European Union. As Will Davies noted:

In this context, the slogan ‘take back control’ was a piece of political genius. It worked on every level between the macroeconomic and the psychoanalytic. Think of what it means on an individual level to rediscover control. To be a person without control … is to be the butt of cruel jokes, to be potentially embarrassed in public. It potentially reduces one’s independence. What was so clever about the language of the Leave campaign was that it spoke directly to this feeling of inadequacy and embarrassment, then promised to eradicate it.[[14]](#footnote-14)

**British Laws for British Workers**

The crucial point, therefore, is that Conservative hostility to certain supranational institutions is not simply some irrational derangement; rather it is the result of a series of political-economic changes of global capitalism, as concretely manifested in Britain. Even today, with the rhetoric of the end of austerity, the Conservative Party is committed to a neoliberal model of capitalism which generates a significant sense of people being unable to control their own lives; it must find ways to respond to discontent at this state of affairs that are compatible with its political-economic model. Accordingly, it targets distant bodies cast as technocratic and elitist – the European Union, the European Court of Human Rights. This is effective because it does in fact respond to the real alienation created under neoliberalism and because the bodies it targets *are* distant and unaccountable.

In the radical critique of distant and alienated social forces, these are counterposed to more participatory forms, in which people are able to – on a democratic basis – intervene in those distant and alienated systems. This, of course, is not what the Conservative Party proposes. Instead, what the Conservative Party mobilises is a form of racialised nationalism. Thus, as Michelle Farrell and Edel Hughes have noted in their piece ‘Magna Carta and the Invention of “British Rights”’, Conservative attacks on ‘human rights’ do not call for an end to human rights, or for a move beyond them, rather they counterpose them to a tradition of ‘British’ human rights, stretching back to the Magna Carta.

This is the core to the Conservative Party’s attempts to gain legitimacy through defiance. They counterpose distant, alienated social forces against *British* ones. The way in which people can regain control over their lives – on this argument – is through authentically British institutions. This sense of Britishness can then easily be turned inwards, although the British judiciary is British ‘in name’ they act on behalf of these unaccountable forces, and so in substance are not ‘British’.

The brilliance of this cannot be understated. The Conservative Party’s own commitment to neoliberalism and its attendant law–sterity creates a situation in which people’s lives are dominated by abstract distant social forces and institutions. Indeed this is absolutely key to neoliberalism. The Conservative Party takes this discontent and directs it against other distant and alienated institutions in the name of ‘Britishness’. Through this it is able to weld together a political coalition that goes beyond its ‘natural’ constituency. It can also wield this against its opponents within Britain itself. At the same time, this allows the Conservative Party to distance itself from the very situation that it was complicit in creating. The Conservative Party is able to recast itself not as a Party of neoliberal governance and law–sterity but as a plucky underdog defending ‘Britishness’ and giving people control over their own lives.

**Whose Rule of Law?**

A central conclusion of the above is that attacking the Conservative Party for violating ‘the rule of law’ is ultimately likely to prove ineffective. This is true in a twofold sense. Firstly, the attacks on ‘the rule of law’ are not an aberration, or some side effect from the pursuit of Brexit, they are in fact absolutely central to the Conservative Party’s political programme. They are a key element in welding together its political base. It is no accident that those Conservatives who agree with such criticisms tend to be retired from frontline politics within the Party (e.g. the parade of former leaders), or without a political base within the Party at large. A break with Conservative opposition to ‘the rule of law’ would require a Conservative Party willing to substantially break with neoliberalism and law–sterity. This seems unlikely.

Secondly, however, the Conservative Party has always been careful – even where it is at its most defiant – to preserve a commitment to the ‘rule of law’. The point is precisely that the Conservatives counterpose an authentic, sensible *British* rule of law, to that imposed by distant, foreign laws and institutions. Every attack on the ECHR has been matched by a promise to create an authentic British Bill of Rights enforced by the British Courts. A significant point of contention around the Northern Ireland Protocol was over the jurisdiction of the European Court of Justice, which the government argued would leave British law at the mercy of a European body.[[15]](#footnote-15) Similarly, in the post–Brexit world, the Conservative Party has insisted that in order to ‘take advantage’ of the opportunities provided by Brexit, it will be necessary to replace those laws with authentically British ones, via a Brexit Freedoms Bill.[[16]](#footnote-16) In all of these cases, of course, the authentic British laws are envisaged as either weakening protections from capital and the state or ‘cutting red tape’ and so strengthening the hand of capital. Thus in the name of reclaiming alienated power, the Conservatives in fact further deepen those very social relations which generate this alienation to begin with.

This particular focus has led some liberals to try and argue that the European Convention on Human Rights was drafted by Conservatives, or that the Conservative Party took Britain into the European Union. The aim here is to insist that these institutions are *really* British in some sense, and so undercut the Conservative bids for legitimacy. One obvious question here is why avowed liberals are so keen to defend institutions they themselves acknowledge as ‘conservative’. Beyond this though, such criticisms ultimately miss the mark because they misunderstand the underlying factors helping the Conservative critique to ‘stick’. It is simply *true* that bodies like the EU and ECtHR are inaccessible to most people, they were *designed* this way, and that is why they historically obtained Conservative support. Attempting to argue they are ‘really’ British feels like special pleading. Perhaps more importantly, engaging in this argument ultimately legitimates the entire frame of the Conservative argument that ‘authentically’ British institutions are the only ones worth defending.

Ultimately, then, we are left with a conundrum. The Conservative Party is able to mobilise a sense of discontent and alienation generated by its own political project and channel it into a nationalist critique of ‘outside’ inaccessible, alienated forces. Its attitude to the ‘rule of law’ cannot be extricated from this. Any generalised attempt to criticise the Conservative Party for their opposition to the rule of law ‘as such’ is simply to invite a response that the Conservative Party *is* committed to the rule of law, but one that is rooted in local, British institutions.

More importantly for the left, however, is that to engage in this critique is an attempt – in practice – to mount a defence of distant and alienated modes of conducting politics. Many of the institutions attacked by the Conservative Party do, of course, defend the interests of the oppressed and exploited, albeit in a limited and incomplete way. Yet these organisations do so in such a way which frequently upholds and reinforces the *status quo* – the EU of course has an institutional and legal commitment to neoliberalism, the ECtHR has played a crucial role in weakening the power of organised labour, and the architecture of international refugee law is frequently complicit with the maltreatment of refugees.

Beyond the substantive failings of these institutions, their abstract and alienated nature means they often function to rearticulate systemic challenges to the *status quo* (and capitalism in particular) into a form that ultimately preserves and strengthens capitalist social relations. Indeed, for many Marxist theorists law has an intimate and structural connection with the capitalist mode of production, meaning that any challenge to capitalism cannot simply embrace unproblematically the law and its rule. In this respect, the rule of law has frequently been invoked against the left, and used to challenge attempts to impose greater social control over capitalist social relations by insulating from the ‘political’ realm. It is for this reason that – on some level – the Conservative critique has bite, law *is* an alien power that stands above most people.

Any left project which seeks to escape from this Conservative framework must start from an attempt to identify the concrete and material sources of domination in people’s lives – capitalist social relations. Such social relations are of course deeply imbricated with the law. As such, a Marxist critique here cannot embrace either the ‘rule of law’ of particular supranational institutions, instead it must offer a critique of both, but not in the name of an imagined or racialised Britishness. In so doing, it will become possible to argue that, far from defenders of ‘taking back control’, the Conservative Party’s political-economic project is one premised upon continually removing people’s control over those social forces that fundamentally shape their lives.

1. https://www.independent.co.uk/news/uk/politics/matt-hancock-brexit-withdrawal-agreement-international-law-b420868.html [↑](#footnote-ref-1)
2. https://www.theguardian.com/commentisfree/2020/sep/22/government-break-law-torture-bill-military-personnel-civilians-overseas-operations [↑](#footnote-ref-2)
3. https://www.bbc.co.uk/news/uk-politics-53937593 [↑](#footnote-ref-3)
4. https://www.newstatesman.com/politics/2020/08/its-not-activist-lawyers-this-government-hates-but-the-laws-themselves [↑](#footnote-ref-4)
5. https://www.telegraph.co.uk/politics/2019/09/30/rule-law-integral-conservatism-tories-should-not-fight/ [↑](#footnote-ref-5)
6. https://www.newstatesman.com/uncategorized/2020/07/coronavirus-and-rise-rule-breakers [↑](#footnote-ref-6)
7. https://www.jacobinmag.com/2017/11/trump-corey-robin-reactionary-mind-interview [↑](#footnote-ref-7)
8. https://www.bbc.co.uk/news/uk-politics-16708845 [↑](#footnote-ref-8)
9. https://www.theguardian.com/law/2015/jun/15/david-cameron-british-bill-of-rights-safeguard-legacy-magna-carta [↑](#footnote-ref-9)
10. https://www.bbc.co.uk/news/uk-politics-15160326 [↑](#footnote-ref-10)
11. See my Salvage article ‘Against Law-Sterity’ for a discussion of this. [↑](#footnote-ref-11)
12. https://www.theguardian.com/politics/2018/oct/03/theresa-may-conference-speech-ambasts-labour-as-she-calls-for-tory-unity [↑](#footnote-ref-12)
13. https://www.bbc.co.uk/news/uk-53207700 [↑](#footnote-ref-13)
14. https://www.perc.org.uk/project\_posts/thoughts-on-the-sociology-of-brexit/ [↑](#footnote-ref-14)
15. https://www.bbc.co.uk/news/uk-northern-ireland-58889543 [↑](#footnote-ref-15)
16. https://www.gov.uk/government/news/prime-minister-pledges-brexit-freedoms-bill-to-cut-eu-red-tape [↑](#footnote-ref-16)