

How to solve the migrant crisis? Bury the rule of lawyers

Leaders must regain public trust by taking decisive action and accepting that the international rules-based order no longer works, the Labour peer writes



*An anti-immigration protester in Bournemouth last week reflects popular anger at the failure to stop Channel crossings
FINNBARR WEBSTER/GETTY*

The enduring inheritance of New Labour has not aged well. The Iraq war strengthened the regional power of Iran, with consequences we have lived with for two decades. The creation of a Scottish parliament has diminished a great nation.

The removal of the law lords and the creation of a Supreme Court was of equal constitutional importance to the national parliament for Scotland. This was allied to a legal order based on human rights in which the harmonisation of interests between nations and between people was achieved not through politics, but through law. Sovereignty lay in the courts not in parliament.

This is a good definition of the “international rules-based order”, which until recently, we were supposed to be living in.

The subordination of national sovereignty to international treaty law was the foundation of the system, and the European Union remains its institutional embodiment. The free movement of people, goods, services and capital were sacrosanct, as this was the condition of peace, trade and prosperity.

It was at this point that the rule of law morphed into the rule of lawyers who prescribed the acceptable parameters of politics. Issues relating to economic strategy and immigration were outside acceptable politics.

The problem was that such a view is impossible to sustain as politics is fundamental to how a society protects and reproduces itself. There was still a lingering notion in the nation that voting mattered, that sovereignty mattered, that governments could do things other than comply and manage.

For the UK, this tension between treaty law and democratic sovereignty came to a head in [the Brexit referendum](#). It was the beginning of a different era in which the working class, far from being the left behind, became the decisive factor, an era in which sovereignty, democracy and politics reclaimed their primacy from the claims of what Ronald Dworkin called “law’s empire”. It was an insurrection against the status quo and it still grows in energy and power.

I attended a Maga rally during President Trump's second inauguration and I witnessed people throwing their lanyards in the bin and declaiming: "Free at last, free at last, thank God Almighty, I'm free at last," to great applause from those around them.

What began with the Brexit vote was finalised with Trump's 2024 election. The new era is not coming; it's here.



Donald Trump at his final campaign rally of the presidential election in November last year, in Grand Rapids, Michigan
KAMIL KRZACZYNSKI/AFP/GETTY IMAGES

The Conservatives were elected in 2019 on the basis of levelling-up, a new economic model and controlling immigration. They did none of those things and now enjoy the status of ghosts. They are forgotten but unforgotten, which is, of course, purgatory.

The issue that has clarified all of this is illegal migration. The material reality of globalisation, technological change and a rights-based order has taken on a huge symbolic significance, summarised in three words: "Stop the boats".

The old era and the new clash in real time and it defines the choice before the Labour Party and this government. A wise government can distinguish between ephemeral and enduring matters of public concern and respond to longstanding public discontent.

The boats are the crystallisation of decades of dispossession and disappointment. Action is required to restore trust. It includes everything: wages, the economic model, street safety, phone theft, identity, sex and faith. It is deep politics of the kind that the rights-based order tried to outlaw.



Nigel Farage campaigning in Blackpool before the general election last summer. The Tories were punished by voters for their record of controlling migration
OLI SCARFF/AFP/GETTY IMAGES

The prime minister has said this is a matter of “national security”. Such a status legitimises use of the armed forces. The Royal Navy can patrol the Channel to stop the boats and protect our borders. I have just come back from Ukraine, where I saw “border drones” that can identify each boat.

But the deeper question is whether Labour is going to be the protector of the old order or the midwife of the new. Is it going to follow Germany and become what Angela Merkel called “a human rights superpower” or will it restore the effectiveness of and trust in the state through the exertion of sovereignty?

There is no reason this should be a dilemma for Labour. The 1945 government was a signatory to the [European convention on human rights](#) in 1950 but it had no status whatever in English law. Clement Attlee and Ernest Bevin were particularly adamant that no foreign jurisdiction could have status in an English court. Reading through the cabinet minutes, I felt very proud of my party.



Ernest Bevin, left, leaves No 10 after a meeting with Clement Attlee in 1950. Both men insisted that the European Convention on Human Rights had no status in English law
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It was Roy Jenkins in the mid-1960s who introduced the notion that the European Court of Human Rights had just been established on the basis of the convention, and that could be "borne in mind when making a judgment" in the British courts. It was the entry point of what became a stampede of judgments and laws pulling the convention very far away from its original meaning of not being a Nazi or a Stalinist.

It was only when Labour lost faith in its political economy and was battered democratically that it turned to [human rights as a fundamental “value”](#). Historically it was the staunchest defender of the ancient liberties of religion, conscience, expression and association. It was the greatest champion for the extension of democracy. Attlee wrote essays on why it was that constitutional monarchies had the most radical socialist programmes after the war, and he argues it was due to the stability given by popular affection for traditional institutions.

This new era is one of restoration: the restoration of sovereignty and borders, of the effectiveness and integrity of the state, of the authority of parliament, of the power of our armed forces, of industry, strong democracy and the dignity of labour. An era of bilateral partnerships, not multilateral treaties.



Migrants trying to board a boat in Gravelines, between Calais and Dunkirk, last week
DAN KITWOOD/GETTY IMAGES

The wisdom of the ancient constitution is manifold. The sovereignty of the King in parliament was based upon the balance of interests not the separation of powers. The attorney-general and the lord chancellor both sat in cabinet. The law lords were the highest court. The primacy of the Commons ensures that democracy is ultimately sovereign. A prime minister with a majority in parliament can act effectively to protect the peace of the realm, advance the welfare of the nation and is accountable only to that parliament. The Labour Party was constitutionally conservative, precisely because it was economically radical. It was traditional because it was democratic.

The future will be shaped by strong democratically elected leaders who have the ability, as Machiavelli put it, “to act in time”. Not by human rights lawyers.

There is already one great party decimated by its inability to grasp the possibilities opened up by the new era, it would be tragic if Labour joined it in defence of values that were never its own.

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