

Reintegration Post-Brexit (2020–2022): European Union Reorganization – Securing The Public Square of Democracy; Creating a New Global Compact

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Summary: In January 2020, the UK Parliament completed the long-awaited ratification process for the 2018 negotiated EU-BREXIT divorce agreement. After four tumultuous years of UK public contestations, including three general elections in less than five years, the forced resignation of two Prime Ministers after multiple internal Parliamentary votes of 'no confidence', the scheduling of an illegal closure of Parliament by the Prime Minister to block BREXIT debates, and the public and divisive 'Get BREXIT done' campaign in the December 2019 general election, the UK Conservative Party finally succeeded in securing a majority in Parliament and in moving the agenda. The UK begins a 2020 transition period for its permanent departure from the European Union. Even though the long list of unresolved demands outlined by UK citizens in the original 2016 BREXIT vote focused on "the politics of resentment" and a perceived breach of the social contract inherent in democracy, it is not clear that those domestic BREXIT concerns about social investments in housing, health care services, jobs, and education will even be addressed as part of the UK-EU scheduled negotiations in the transition period. The transition period and its negotiated agreements will be governed by the parameters of The Political Declaration ratified in January 2020. While not legally binding, The Declaration publishes extensive guidelines to govern negotiation

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processes and outcomes between the parties for regional economic capital and international finance settlements as well as parameters for thirteen sectors for global competition / cooperation including mandatory accession by the UK to certain WTO treaties. Large economic sectors for regional transactions including all transportation /energy sectors, public procurement, intellectual property, financial services and economic capital movement will still be governed by “good faith” requirements embedded in TEU Article 50 moving forward. The domestic BREXIT “politics of resentment” is not unique to the UK as national elections 2016–2018 across the Continent also routinely evidenced this citizen resentment as a widespread phenomenon. Even the EU Parliament elections of May 2019 which had one of the highest voter turnouts across the Continent shifted the internal operation of the EUP for the first time in forty-five years. The European Union as a regional entity is once again faced with issues of differentiated integration as it steps forward to not only reshape economic relations for the Common Market but also to ensure support by its State members for values of participatory democracy and the protection of individual liberty across a range of borders and changing international and regional circumstances. The door is wide open now for EU institutional re-evaluation and re-ordering in this transition period as the UK makes is permanent departure. Former Eastern Bloc States along with Greece and Italy want a more empowered infrastructure for the EU moving forward and putting an end to long standing austerity EU programs imposed by the neoliberal paradigm [c.1980–2010] for capitalist globalization, an ideology that has diminished State sovereignty and eroded democratic societies. These countries are also positioned within the EU to appoint Commissioners and use their influence in new more productive ways that may not always support the EU bureaucracy in Brussels. In December 2019, the Council on the European Union set up a 2020–2024 targeted review process called a Conference on the Future of the EU following extensive 2018 EUP resolutions and citizen reviews demanding more transparency and accountability of EU institutions. The goal is to have needed TEU procedural and treaty changes in place by the 2024 EUP elections. Legitimate expressions of sovereignty and a new paradigm for capitalist globalization for this century are simultaneously in the forefront for the EU even as BREXIT transition negotiations continue. The GeoNOMOS introduced here is a strategic and structural answer for a new EU infrastructure that empowers and supports the 27EU State members and at the same time designs a more balanced compact for capitalist globalization. The EU was created over 45 years ago as a result of a regional treaty agreement and a geographic legal configuration that collaboratively functioned through a scaffolding of “shared sovereignty.” State members as sovereign entities voluntarily granted a certain level of ongoing legal competence to the operation of EU structures and its bureaucracy through national level Constitutional ratification. The range

of that “competence” can be amended under the TEU and that process is seriously being evaluated in 2020 by many EU member States. The ripple effect of these institutional challenges to definitions of sovereignty and values of democracy are not confined to the UK alone but rather, suggests that a new definition of the nation State will be required for this century if the State is to remain the sole architect of world order. The GeoNOMOS offers a set of definitions and a strategy for implementation in the post-BREXIT era. It depicts a model of sovereignty for the 21st century based on a framework of liberty and its enterprise of law so that the State at its core can strategically support these two primary functions: [1] secure participatory democracy and individual liberty as it continuously balance all of its essential capital resources [economic, human and social], and [2] participate in the design of a new sustainable global marketplace as a member of the international community of States.

Keywords: Sovereignty – BREXIT – GeoNOMOS Model – Politics of Resentment – The Public Square of – Democracy – Heterarchy – European Union – Framework of Liberty – Enterprise of Law – Legal Constitution for Capitalism

1. Introduction: transition 2020–22. Redressing the politics of resentment

Ratification of the EU-BREXIT divorce agreement was completed in January 2020 by the UK Parliament in what some have hailed both as a considerable victory for Prime Minister Boris Johnson and as the end of a contentious political transition in a long journey of seeking independence from the European Union. And while that statement is certainly true, much of the hard work for the transition period in 2020 to create new regional and global relationships reflect challenges yet to be addressed and economic relationships yet to accomplished.¹

¹ PAYNE, A. Boris Johnson will not be able to ‘get Brexit done’ by the end of 2020 [January 13, 2020]; Available at: <https://www.businessinsider.com/why-brexit-will-not-be-done-by-this-year-2020-1> [Boris Johnson is highly unlikely to be able to meet his promise to “get Brexit done” by the end of 2020. A report by the *Institute for Government* think tank published January 13, 2020 spells out the monumental challenges the United Kingdom has to prepare for December 2020 deadlines of replacing all existing custom and trade ties. During this time of 11 months, the UK will continue to follow EU trade rules as both sides adjust to their new relationship. Johnson has indicated there will be no extensions to the transition period beyond December, despite myriad warnings about the little time there is to prepare for life outside of EU structures, including the task of negotiating a new trade deal with Europe. The prime minister has sought to underline this statement by including a block on extending the transition

In particular, the transition agreement sets out two key points of “no return” so to speak – June 2020 which is the last month the UK can petition the EU for an extension to the transition period beyond December 2020; and November 2020 which is the last month the 27EU can meet under TEU Article 50[2] to ratify all the final negotiations and trade agreements that must be completed in the 11 month 2020 UK transition period.²

period within the ratification legislation/ Withdrawal Agreement Bill, which will become law before February 15, 2020. This limitation will be particularly challenging for smaller businesses, many of which simply don't have sufficient resources and expertise to adapt to new rules and obligations for trading with EU as the country's biggest trading partner in such a short space of time. These businesses will be adjusting to Britain's new relationship with the EU well beyond December 2020]; See also LANDLER, M. and CASTLE, S. And You Thought Brexit Was Tough. [January 8, 2020] Available at: <https://www.nytimes.com/2020/01/08/world/europe/brexit-united-kingdom.html> [Following January 31, 2020, negotiators will then have to agree on terms for trading in goods and services, as well as on regulations covering health, safety, fishing, farming, banking, aviation and transportation – replacing the latticework of rules that entwined Britain and Europe over their four decades together. If the two sides fail to strike a deal by December 31, 2020, it could theoretically trigger something like the “no-deal Brexit” that Mr. Johnson threatened in October 2019 before Parliament passed legislation to thwart his efforts. The more likely scenario, experts said, is a “bare bones” trade deal that will leave many of the issues to be hashed out in 2021 and beyond. Either way for the British voter who thought that Boris Johnson's ‘Get BREXIT done’ landslide election in December 2019 would end the three-year BREXIT turmoil, the 2020 drama as it unfolds will be a very rude shock. Moreover, Johnson's advisers appear determined to shun close alignment with the European Union in favor of an agile, less-regulated economic model that some have dubbed Singapore-on-Thames. Johnson has banned the word “BREXIT” from all public discourse and official press releases. In the EU, officials in Brussels are preoccupied by the complexity of the looming trade talks and are pushing the British to be pragmatic. They remain weary of Mr. Johnson's insistence on a compressed, time-limited negotiation, which they say could inflict needless damage on Britain's economy]

- ² AMARAO, S. *UK is set to exit the EU next month: Here are some important Brexit-related dates of 2020* [December 30, 2019]; Available at: <https://www.cnn.com/2019/12/30/here-are-the-main-brexit-dates-in-2020.html> [Setting out these key dates: June 2020 // A EU-U. K. summit is expected to take place. At this point both sides will have to decide whether they can finalize their new trade relationship by the end of 2020. Prime Minister Boris Johnson has said that he does not want to prolong the transition and he has already implemented UK legislation against further delays to the Brexit process. November 2020// European lawmakers have argued that their meeting in late November is the last possible moment for them to sign off on a second agreement, if the transition period is to end by 2020. December 31, 2020 – Provided that there has been no extension and a deal has been struck, this day is when new arrangements and a new relationship will officially come to force. Senior EU officials have sounded alarm bells, arguing that 11 months is a challenging timeline. In this context, the new European Commission President Ursula Von der Leyen indicated that the EU will be looking to focus on the most pressing issues first, where there would be no unilateral nor contingency measures to replace current arrangements].

The ratified 2018 negotiated Withdrawal Agreement³ and its tandem Political Declaration⁴ is really just opening the gate so to speak for the regional dynamics of how the UK and the EU will restructure the region and the global markets for decades to come. In addition to the negotiation guidelines listed in The Political Declaration document, there are extensive EU treaty interpretations that will impact the scope and content of 2020 ongoing negotiations between the parties. Those interpretations will always reflect the initial TEU notification process launched by the UK in March 2017 under Article 50 and the subsequent Court

- ³ The Withdrawal Agreement Commission to the EU 27, 14 November 2018, TF50 [2018]; *Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the EU and the European Atomic Energy Community* as agreed on 14 November 2018 in eu.european.eu [Note: The Political Declaration set out in the framework is also subject to UK ratification and accompanies the Withdrawal Agreement specifically endorses future relations including instructions to negotiators who will deliver the final terms covering the parties/economic relationships at the end of 2020]; See also High Court of Justice, 3rd November 2016, *R[Miller] v The Secretary of State for Exiting the European Union* [concluding that Article 50 of the TEU must always be read in conjunction with Article 4 of the TEU requiring full member cooperation]; Note that while most of the UK Parliamentary discussions 2017–2019 were reflective of the procedural mechanisms around triggering Article 50 TEU many discussions continue as though unilateral termination and withdrawal as a UK process can occur without considerations of Article 4 TEU, the rule of law and underlying legal commitments, other relevant procedures and regulations in the existing UK treaty obligations still in effect during the transition period]
- ⁴ *Revised Political Declaration* [October 17, 2019], Available at: https://ec.europa.eu/publications/revised-political-declaration_en [The 26-page *Political Declaration* accompanied the final Withdrawal Agreement and set out the basis for future relations, including economic globalization and trade. It contains thirteen different sections which specify in detail the guidelines for post-ratification negotiations between the UK and EU as part of the 2020 transition period and ensures that outcomes will consistently reflect the WTO commitments, build on the WTO parameters of Free Trade Agreements, and mandates the UK accession to the WTO Government Procurement Agreement [GPA]. The outlined negotiation guidelines on market access include but are not limited to these areas: trade and tariffs in goods and services; intellectual property; capital movement and financial transactions, the entire energy sector, all transportation sectors [aviation, roads, train and maritime]; and the fishing industry. On citizen mobility, the Declaration identifies ten specific guidelines for upcoming negotiations between the parties. This Declaration is not legally binding but defends the core principles outlined by each party; namely, [a] the integrity of the single market and customs union for the EU, and [b] the sovereignty for the UK. The Declaration ratification also establishes a mechanism for calculating the financial settlement that the UK owes the EU to meet its obligations with estimates set to be above €40 billion. It also includes contributions to be paid during the planned transition period to end in December 2020. If the transition period is ultimately extended for a second time, of course, more EU payments by the UK would be due]; for historical context on these matters, see also, SANFORD, A. *Both Brexit and Remain MPs Opposed May's Deal and Why* [online] [July 12, 2018]. Available at: <https://www.euronews.com/2018/12/07/what-is-in-theresa-may-s-brexit-deal-and-why-is-it-so-unpopular> [Accessed 15 Jan 2020] [Noting that the long Withdrawal Agreement (on the terms of the UK's exit) and shorter Political Declaration (on the future relationship) were the result of 18 months of negotiations.]

cases that have interpreted a broad “good faith” requirements embedded within the TEU generally and in the Article 50 process itself.⁵ So in addition to the ongoing structured negotiations with the EU which involve primarily economic capital, financial systems and regional trade arrangements, the U.K Parliament, and particularly the Conservative Party in power, will have to come face-to-face now with the underlying domestic conflicts and citizen demands for justice and equity that led to the 2016 BREXIT vote in the first place.⁶

The original 2016 BREXIT vote signaled a *politics of resentment* exemplified by an enraged UK citizenry who demanded separation from the European after a forty-five year partnership⁷ and provided a “wake up” call to re-design

⁵ Lisbon Treaty on the European Union [online]. Available at: <http://lisbon-treaty.org/WCM/the-lisbon-treaty/treaty-on-european-union-and-comments/title-6-final-provisions/137-article-50.html> [Noting that any Member State may decide to withdraw from the Union [EU] in accordance with its own constitutional requirements so long as the Member State notifies the European Council of its intention. This notice triggers a set of guidelines from the European Council to negotiate an agreement with that State for arrangements of the withdrawal and is to also take into account the framework for the future relationships of that State with the EU. The final agreement must have majority approval of the European Council members and the consent of the European Parliament. The Treaties between the parties cease from the date of entry of the negotiated agreement [See also Article 218(3)] or failing an agreement, two years after Article 50 notification is given by the State, unless the European Council unanimously decides to extend this time period]; See also BARBER, N., HICKMAN, T., KING, J. The Article 50 Trigger. *Counsel* [Aug 18–19, 2016] [argues that the Prime Minister alone is unable to trigger withdrawal from the EU under TEU Article 50; Prime Minister must be authorized to do so by statute in order that the declaration is legally effective under domestic law and complies with the preconditions of triggering Article 50]; see also BUTLER, M. Implications of Brexit: Who is Sovereign Now. *S. J.* 2016, vol. 160, No. 29, pp. 30 [discussing what Brexit vote entails for UK parliamentary sovereignty and for UK influence in international issues; considers whether UK constitutional law requires not only government's use of ‘crown prerogative’ but also a parliamentary vote in favor of leaving EU]

⁶ MERRICK, R. There is No Way Out of Failed Economy Without a Government that is Prepared to Intervene in the Economy [online]. Available at: <http://www.independent.co.uk/news/uk/politics/election-2017-jeremy-corbyn-uk-leave-eu-brexit-prime-minister-win-general-labour-leader-a7726551.html> [noting that BREXIT strategy will need to include a multi-billion pound strategy to create new jobs and end ‘deindustrialization’ as the UK economy continues to be the slowest growing among advanced nations; The Labor Party suggested a National Transformation Fund and a network of Regional Development Banks to drive infrastructure investment, the development of green industry and the job skills and job creation through medium sized business development; Labor Party continues to call for more local community control of sustainable economic models of development]; see also REVESZ, R. Theresa May is ruining Brexit by Putting Conservatives Before National Interest [online]. Available at: [⁷ The basis of a “common law of humanity” emerged after the end of the Cold War in the 1980's followed the emergence of independent States in Eastern Europe who were active in the United Nations and demanded equity and fair access into the global marketplace and international](https://www.independent.co.uk/news/uk/home-news/ [noting that former civil servants want national interests to be priority in Brexit negotiations; the Conservative Party cannot simply negotiate with themselves to bring the country to the next level of transparency and planning initiatives]</p>
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economic domestic policy for a new paradigm for capitalist globalization.⁸ The 2016 BREXIT campaign did not focus on matters of participatory democracy and solidarity, but rather on fomenting citizen fears and rumors concerning the longstanding conditions of the entanglement across borders and regional economic financial systems.⁹

finance as well. The World Trade Organization was created in 1995 as an evolution of the multilateral General Agreement on Tariff and Trade [1948]. These global trading contractual agreements between States coupled with many regional trade agreements in the late 20th century continued to erode the Westphalian notion of an absolute form and unilateral expression of State sovereignty. However, cooperative behavior increased between sovereign States and seemingly eroded the authoritarian and more traditional Westphalian model of sovereignty, the endorsement of equality among sovereign States is still a primary focus for the EU as it is also foundational to the United Nations Charter and other global institutions such as the International Monetary Fund, the World Bank, and the World Trade Organization.

⁸ *Here's What Many Journalists Missed in When Covering The Brexit Vote* [online]. Available at: <https://www.washingtonpost.com/news/monkey-cage/wp/2016/08/04/heres-what-many-journalists-missed-when-covering-the-brexit-vote/> August 4, 2016. [Noting that welfare states such as UK have had policies that helped free trade losers; pointing to political analyst John Ruggie who often called this system for cushioning blows from the international economic system “embedded liberalism” and argued that the interventionist domestic welfare state made possible today’s liberal trade order on a global scale. But these policies are eroding as private corporations gained enormously from globalization using complex financial arrangements to escape domestic taxes and wealthy individuals are doing the same. Economic inequality is increasing in a “winner-takes-all” society where mainstream media that focuses on racism and xenophobia rather than on economic loss and inequality may not be taking into account these political policy shifts. Quoting Larry Summers who had predicted in 2005 that financial markets could not fail, now recognized that the Brexit vote is a “wake up call to elites everywhere on a need to redesign economic policy” that hears the anger expressed in the Brexit vote. The real issue in BREXIT was what did average British voter gets when and how from EU integration]; See also BREXIT Global Recession [online]. Available at: <https://www.independent.co.uk/voices/brexit-global-recession-germany-stock-markets-crash-record-closing-highs-a8793401.html> [Accessed 25 May 2019][noting that the UK accounts for about 13 % of the EU’s trade in goods and services, according to the International Monetary Fund. The IMF warned that economic growth across the remaining 27 EU states would fall by up to 1.5 percent in the long run and employment would fall by 0.7 percent, if the UK fell back on WTO rules to trade with the bloc after Brexit ; discussions about a global recession continue]; See also SWINFORD, S. *Theresa May pledges to Fight Injustice and Make Britain ‘A Country that Works for Everyone’ in Her First Speech as Prime Minister* [online]. Available at: <http://www.telegraph.co.uk/news/2016/07/13/theresa-mays-pledges-to-fight-injustice-and-make-britain-a-count/> [Access 31 July 2019]

⁹ COHEN, R. *Britain’s BREXIT Leap in the Dark* [online] Available at: <https://www.nytimes.com/2016/06/25/opinion/britains-brexit-leap-in-the-dark.html> June 24, 2016. [Pointing out that fifty-two percent of the British population was ready to face higher unemployment, a weaker currency, possible recession, political turbulence, the loss of access to a market of a half-billion people, a messy divorce that may take as long as two years to complete, a very long subsequent negotiation of Britain’s relationship with Europe, and the tortuous redrafting of domestic laws and trade treaties and environmental regulations – all for what the right-wing leader Nigel Farage daftly called “Independence Day”]

The focus of most all of the 2017–2019 EU-UK negotiations predominantly related to regional economic capital, its development and utilization, and how deeply interwoven trade, borders, taxes, tariffs, and integrated financial transactions hindered the EU and the UK as they wrestled to reconcile TEU Article 50 and the 2016 populist demand to “reclaim” British sovereignty by divorcing the European Union. There were no underlying propositions throughout the 2017–2019 EU-UK divorce negotiations nor have there been any public UK Parliamentary debates about the citizen complaints that fueled the 2016 BREXIT vote in the first place: re-define the legitimate role of sovereignty for the 21st century; affirm demands placed on the State to create broader social investments and domestic economic development programs for housing, education, employment and health care program; and finally, re-design of a more equitable paradigm for capitalist globalization to support domestic priorities of the State [social contract of democracy] and a 21st century society of global traders.¹⁰

BREXIT was and remains about a deep and profound sense that somehow in agreeing to the EU regional treaty system that the UK had “lost” its sovereignty and its unique identity as a State.¹¹ The ongoing public manifestation of the

¹⁰ GREWAL, D. The Legal Constitution of Capital. In: BOUSHEY, H., DELONG, J. B. and STEINBAUM, M. (eds.). *After Piketty: The Agenda for Economics and Inequality*. Cambridge, MA: Harvard University Press, 2017, pp. 470–491. Grewal suggests that this “constitution of capitalism” has a double meaning. First, it reflects the constitutional order that has been adopted by most capitalist societies. The question is whether citizens have a constitutional right to live in a society free of monopolies or what is referenced often as “crony capitalism”. This is not the first century where “trade monopolies” have caused revolutions. Perhaps it is time to rethink economic liberty in relation to the legal analysis, eg, rational basis review of times past and to incorporate new 21st century standards for economic liberty and definitions of “monopoly” that reflect the tremendous private accumulation of economic power across the globe so as to prevent legislation that create global or State economic castes or economic classes of citizens.] AUTHOR’S NOTE: The bargain underpinning the EU is that compromises in national sovereignty through accession to EU regulatory compliance will bring economic and social benefits. So, creating a common economic market that could rival the American economy would be a boost to lift all boats. Yet while greater access to markets and labor migration accelerated within the EU, EU policy mandated severe public austerity measures produced cutbacks in domestic-level social programs, education and health. These public austerity measures are now at the forefront of domestic political review as evidenced by the politics of resentment and in a growing internal dispute with Member States, eg, Italy, Spain, Greece, Poland and Hungary. For many working people, the benefits of EU membership did not appear to outweigh the stagnation and perhaps even decline in the quality of life they experienced, combined with the loss of economic security]

¹¹ ERLANDER, S. *Brexit’ Opens Uncertain Chapter in Britain’s Storied History* [online]. Available at: https://www.nytimes.com/2016/06/25/world/Europe/Brexit_european-union-uncertain-chapter-in-britains-storied-history.html June 24, 2016 [noting that the divisions on BREXIT are just as much cultural as economic, raising serious questions about Britain’s political coherence and unity after such a vicious 2016 campaign; BREXIT actually exacerbated tensions within the four countries of the United Kingdom jolting long standing issues about English nationalism and

politics of resentment is best described here as a steady rise of populism across the region that challenges the post-World War II notions of liberal democracy, the values of solidarity, and the traditional role of the “welfare state.”¹² National elections in 2016–2018 across the Continent and again, in the European Union Parliament [MEP] elections May 2019 reflected waves of populism echoing the *politics of resentment*. These trends included concerns about the loss of sovereignty, perceived changes in the legitimate expression of sovereignty, the mandatory nature and negative implications of EU austerity budget planning upon State level domestic priorities, and the call for extensive EU institutional

its ‘festival of democracy’. The Scottish independence referendum had clearly failed in 2014. In addition to intensifying demands for another referendum on independence for Scotland, the outcome of the European Union vote may also increase demands in England, which makes up 85 percent of the British population, for its own “devolved Parliament” to vote on laws concerning only England, just as Parliaments in Scotland, Wales and Northern Ireland now provide for their regions]

- ¹² The BREXIT 2016 demand to reclaim a “bruised” UK sovereignty sought to return funding the UK had given to EU and invest those monies instead into UK domestic programs to support national health care, access to education, better jobs and more housing. Sustainable funding for these basic domestic programs had suffered enormously in the mind of UK citizens due to consecutive years of mandated State level public sector austerity spending under the conservative political ideology of neoliberalism. These ‘losses’ were coupled with a campaign stoking fear of immigrants – both EU internal citizens living in the and refugees from external countries immigrating to the UK – all of which was viewed as being mandated by the European Union policy implementation and out of the control of the State as sovereign. This fear encompassed a palpable future angst about decreasing domestic jobs security including the loss of other social benefits, a security concern over terrorism and violence perpetrated by immigrants, and reflected a recognized decline in the social fabric and quality of life for many traditional UK citizens. BREXIT voters articulated a deep national concern over the uneven social and economic benefit distribution under the neoerliberal paradigm [1980–2010] of capitalist globalization which has not tangibly “trickled down” to their day-to-day living experience. Those mystified by the 2016 BREXIT vote showed contempt deriding it as a demonstration of one of the major shortcomings of democracy, namely when uninformed electorates make crucial decisions which affect everyone else that is to be governed. However, in a participatory democracy the process of respecting individual liberty means a referendum remains the most democratic means of direct, collective decision-making. There are rightful concerns that 2016, 2017 and 2019 BREXIT public deliberation was confused, media coverage was agnostic to facts, and mistrust of expertise was absent. However, even the UK 2019 “GET BREXIT DONE” general election will not fix the underlying problems of economic stratification, withered public safety nets and a national pride injured by its lost investments in imperialism and colonization. The current sovereign State model in general has failed to address the increasingly transnational problems of the world today, including a growing global economic inequality, mass migration, climate change and the whimsical destruction wrought by the transnational finance networks. It is easy to pin these on the institutions like the EU, but many border-defying problems are the direct result of past UK State actions – the same powers of national sovereignty BREXIT supporters are still seeking to bolster.

changes.¹³ This wave of populism like a tsunami swept across the Continent in France, Austria, Italy, The Netherlands, Greece, Poland, Hungary, and Germany elections reflected a rising sea of change intended to confront the purposes and goals of the European Union as regional institution and to challenge the legitimate expressions of State sovereignty.¹⁴

¹³ SCHAFFER, A. and STREECK, W. (eds.). *Politics in An Age of Austerity*. Cambridge: Polity Press, 2013 [noting that in a neoliberal world of globalization and its demand for increasing austerity measures, democracy and its politics come under tremendous populist pressures as domestic economic budgets are forced to accommodate financial markets in ways governments have increasing trouble being responsive to voter demands. Many if not all of these mandated austerity programs are permanently legislated in ways at the State level that citizens have difficulty influencing the course of government and its direct domestic policies. As a result, democracy is incapacitated]; see also STREECK, W. *Taking Back Control? The Future of Western Capitalism*, *Journal of Economic Research* 1[3], 30–47 [2018]. [noting that the international system is in turmoil based on current architecture of capitalist-economic globalization; this is particularly evident as States lose the capacity to hold civil society together through economic redistribution from prospering sectors to lagging regions]; AUTHOR NOTE: this issue was broadly evident in the 2016 BREXIT election where citizen rhetoric focused on moving EU membership dues back to domestic budget priorities for healthcare, education, job creation and housing and better regional economic development distribution throughout the UK These priorities have yet to be addressed in the EU-BREXIT negotiations into 2020.

¹⁴ ALDER, K. *European Elections 2019: What Were the Clear Trends?* [online]. Available at: <https://www.bbc.com/news/world-europe-48420024> 27 May 2019 [Accessed 6 June 2019] [breaks out election results by party and those election implications]; See also *European Elections: Power Blocs Lose Grip on Parliament* [online]. Available at: <https://www.bbc.com/news/world-europe-48417744>, 29 May 2019 [Accessed 8 June 2019] [noting that generally, voter turnout for EUP elections was the highest for twenty years after decades of declining voter participation. According to EUP post-election reports, just under 51 % of eligible voters across the 28 member states cast their ballots, compared with fewer than 43 % in 2014.; On questions of the legitimate expression of State sovereignty – See FALK, R. Jack Donnelly: State Sovereignty and Human Rights, *Political Science Quarterly*, 1981, vol. 96. [noting that in the late twentieth century, Jack Donnelly proposed a new typology (a four sectioned rectangular box) that balanced State authority and State capabilities with sovereign rule and the State’s scope of domination as it intersected effective components of formal sovereignty and material/normative weaknesses; See also work on more legitimate expressions of sovereignty; DENG, F. *Frontiers of Sovereignty*, *Leiden Journal of International Law*, 1995, vol. 8, no. 2, p. 249, [1995] and STACEY, H. *Relational Sovereignty*, *Stanford Law Review*, 2009, vol. 55, no. 5, p. 210 [Francis Deng and Helen Stacey suggested two different typology arrangements for *sovereignty as responsibility* and *relational sovereignty*. Deng’s typology analyzed a range of both internal and external State factors and then, correlated these factors with a new international standard of *responsible sovereignty as an irreversible process*. Helen Stacey suggested that a new typology of *relational sovereignty* was emerging where the sovereign State would be judged by how well and by what means the State concretely and continuously “cares” for its people; see also a fourth typology for sovereignty, at KU, J. G. and YOO, J. *Globalization and Sovereignty*, *Berkeley Journal of International Law*, 2013, vol. 31, no. 1, p. 210 [2013]; [discussed a *popular sovereignty* based on the idea that people in a sovereign State govern themselves through Constitutional structures and institutions; noting that sovereignty is in decline but the decline in national sovereignty is

It will now be much harder in 2020 than it was in 2014 for the “pro-European” establishment in the EUP to simply dust itself off and carry on as if the 2019 EUP elections have no institutional impact and require no policy changes. The previous 2014 EUP elections took place shortly after the eurozone crisis, when countries were still going from bailout to bailout. The May – July 2019 EUP trending was complicated due to a protracted battle by Germany for the Commission presidency, the realignment of EUP political parties post-election, and the calls for a new approach the old “business as usual” agenda. At least three populist member-state governments – Italy, Poland and Hungary – will have much greater influence for 2020–2024 in the sense that these countries each will not only continue to challenge the legitimate expression of sovereignty in relation to protecting democratic principles. These States will each choose an EU Commissioner, have a more direct influence over the ongoing UK negotiations for the BREXIT transition and play a direct role in designing budget priorities for the EU in general.

The *politics of resentment* has its roots in multiple cultural contexts and is evidenced by a breach of the traditional foundations that uphold the social contract for democracy. A key factor undergirding this dynamic is a revolt against the current neoliberal paradigm [c.1980–2010] for capitalist globalization and the well documented inequality of wealth distribution under its current operating systems.¹⁵ A core assumption of past regional and global foreign policy – that

not desirable since State maintains decision-making and individual liberties. Suggesting a new form of popular sovereignty with shift away from Westphalian models to the right for people to govern themselves through institutions of the Constitution and its structures In this construct, the State can legitimately share sovereign power with its citizens without compromising the whole system.]

¹⁵ Although overseas trade has been associated with the development of capitalism for over five hundred years, some thinkers argue that a number of trends associated with globalization have acted to increase the mobility of people and capital since the last quarter of the 20th century, combining to circumscribe the room to maneuver of states in choosing non-capitalist models of development. Today, these trends have bolstered the argument that capitalism should now be viewed as a truly world system. However, other thinkers argue that globalization, even in its quantitative degree, is no greater now than during earlier periods of capitalist trade. See POLANYI, K. *The Great Transformation*. Boston: Beacon Press, 1944, p. 87; WOOD, E. M. *The Origin of Capitalism: A Longer View*. London: Verso, 2002, pp. 73–94; DUNSMUIR, L. IMF calls for fiscal policies that tackle rising inequality. *Reuters*. [October 11, 2017 [Retrieved November 4, 2017]; see also International Monetary Fund, *Neoliberalism: Oversold?* IMF Finance & Development Report, vol. 53, no. 2; see also SASKIA, S. *Expulsions: Brutality and Complexity in the Global Economy*. Cambridge: Harvard University Press, 2014; see also HARA VEY, D. *A Brief History of Neoliberalism*. London: Oxford University Press, 2005, pp. 165–173; see also FRIEDMAN, W. A. Recent trends in business history research: Capitalism, democracy, and innovation. *Enterprise & Society*, 2017, vol. 18, no. 4, pp. 748–771; see also HILT, E. Economic History, Historical Analysis, and the ‘New History of Capitalism’. *Journal of Economic*

a united Europe had overcomes its historical divisions – has been undermined and perhaps changed forever not only by BREXIT but also by national European elections across the Continent that continued to promote populist, progressive and occasionally, the endorsement of right leaning political parties.¹⁶ Add the growing tensions in the European Union Parliament following the May 2019 MEP elections, and the EU is reflecting a more fragmented future where populist's definitions of legitimate expressions of sovereignty, redefining democracy for this century, and the demand for a new paradigm for capitalist globalization will simultaneously be on EU's negotiating table in the 2020–2022 transition period.¹⁷

The ongoing ripple effect of the BREXIT transition period will continue to bring considerable angst for those remaining 27 EU Members who clamor for broad regional institutional change from within the EU – an angst that suggests they proceed with caution. Yet these nations will ultimately also have to wrestle with the *politics of resentment* in this decade as they collectively redirect the energy of the EU into a 21st century consensus that reflects and effectuates the broader scope of the 1980 post-Cold War doctrine to support a “common law of humanity”.¹⁸ These regional challenges are calling for an *enterprise of*

History, 2017, vol. 77, no. 2, pp. 511–536; SCHUMTER, J. A. *Can Capitalism Survive?* New York: Harper Classic, 2009 [reprint].

¹⁶ The bargain underpinning the EU is that compromises in national sovereignty through accession to regulatory compliance will bring economic and social benefits. Creating a common economic market that could rival the American economy would be a boost to lift all boats. Yet while greater access to markets and labor migration accelerated within the EU, public austerity measures produced cutbacks in domestic-level investments in social programs, job creation, education and health services. These public austerity measures are now at the forefront of domestic political review. For many working people, the benefits of EU membership did not appear to outweigh the stagnation in quality of life they experienced, combined with the loss of security.

¹⁷ One lesson learned through understanding the *politics of resentment* is that economics is opportunity, power and creator of social well-being, not an end in itself but a means to facilitate economic activity. This translates into the creation of economic capital resource for each State so that opportunities created for a diverse and extended population and societies at large are able to nurture and sustain members of their communities with the aim of securing participatory democracy based on protecting individual liberty and of securing the four cornerstones that anchor the framework of liberty: justice, equity, individual choice and individual capacity and resource development. Economic strategy in this model allows the highest level of human evolution-recognizing that a basic level of resources and a societal openness to change and adapt based of merit lies at the core of democracy – thus the dynamics that support economic capital development and utilization secure the core function of the State in the GeoNOMOS along with human capital and social capital and is thus, is a key to ensuring civil society operates well.

¹⁸ The basis of a “common law of humanity” emerged after the end of the Cold War in the late 1980's followed the emergence of independent States in Eastern Europe who were active in the United Nations and demanded equity and fair access into the global marketplace and international finance as well. The World Trade Organization was created in 1995 as an evolution of the

law to support both a participatory democracy based on individual liberty and a sustainable and fair collaboration among global economic traders. Both issues reside firmly in the public square of democracy now. They require intentional institutional engagement to reach a concrete and measurable set of future outcomes – nothing after BREXIT in relation to the core function of the State and its legitimate expression of sovereignty in this century will really ever be the same status quo again. One cannot travel backwards into the future.

2. The challenge: redefine state sovereignty and principles of democracy

Not unlike the UK, the European Union also appears more vulnerable moving into the 2020–2022 transition than at any point since its inception. The populist waves of citizen resentment repeatedly being demonstrated at the ballot box are also translating the European political landscape, shaking EU democratic foundations and governance priorities from within its institutional integrity including the “rule of law” framework for European Union itself.¹⁹ The travails of the euro,

multilateral General Agreement on Tariff and Trade [1948]. These global trading contractual agreements between States coupled with many regional trade agreements in the late 20th century continued to erode the Westphalian notion of an absolute form and unilateral expression of State sovereignty. However, cooperative behavior increased between sovereign States and seemingly eroded the authoritarian and more traditional Westphalian model of sovereignty, the endorsement of equality among sovereign States is still a primary focus for the EU as it is also foundational to the United Nations Charter and other global institutions such as the International Monetary Fund, the World Bank, and the World Trade Organization.

¹⁹ UITZ, R. *The Return of the Sovereign: A Look at the Rule of Law in Hungary – and In Europe*. VerfBlog, 2017/4/05 [online]. Available at: <https://verfassungsblog.de/the-return-of-siveireign/ty-a-look-at-the-rule-of-law-in-hungary-and-in-eruoep> 4 May 2017; also at DOI: <https://dx.doi.org/10.17176/20170405-130326>. [Accessed 21 January 2018][discussing the National Consultation direct mail in 2017 designed to survey citizens on ‘issues of national importance’ ,trying to demonstrate a strong manifestation of support for Hungary’s independence; noting that there needs to be a closer debate over how legal rules are envisioned in a rule of law framework that looks at necessity and proportionality and concluding that these shifting political and legal dynamics have significant relevance –if the EU is be a beacon of light for rule of law and human rights when it very foundations are being shaken]; see also PECH, L., SCHEPPELE, K. L. *Poland and the European Commission, Part III: Requiem for the Rule of Law*, VerfBlog, 2017/10/03 [online]. Available at: <https://verfassungsblog.de/poland-and-the-european-commission-part-iii-requieum-for-the-rule-of-law/DOI:https://dx.doi.org/10.17176/202170303-131734>. [last reviewed October 18, 2018] [discussing the EU attempts to address the systematic attacks on the rule of law, and its ‘annual rule of law dialogue’ that has been operational since 2014; noting that although the EU Council’s annual dialogue has at its purpose to promote and safeguard the rule of law through a more evidence based approach, this process has yet to focus on unifying Member States shared

the tide of immigration (both within the European Union from poorer to richer members and from outside countries), and high unemployment have led to the *politics of resentment* across Europe, including a collective loss of patience, and a waning memory of a common good based on prosperity and solidarity. These challenges require a new set of values that define democracy for this century.

Konieczwicz suggests this *politics of resentment* cannot be fully equated with any single growing EU phenomenon because it never stands alone. It amalgamates and expands political unrest by promoting public debate and creating new, but undefined terms like “illiberal democracy”; denying the established rule of law; and deliberately reordering a mixture of culture, history and domestic politics in a new frame of reference. As Konieczwicz elaborates, this amalgamation is being demonstrated by a pattern across the region: BREXIT amplifying and factually distorting anti-European sentiments in the UK; the operation of right wing parties in France, Germany and Austria that defined legitimacy in the spread of hate speech and publicly promoted the exclusion of “the other”; and the “illiberal democracy” confusion most certainly evident in Poland where disabling the rule of law and its Constitutional “checks and balances” have taken over the State.²⁰ All of the challenges impact the institutional integrity of the European Union as a regional entity and how it defines democracy and the role of the nation State in this century.²¹

values; pointing out that in its published EU Council summary documents in 2016, the Council leadership laments the EU’s members national government inability to address the backsliding and the denial of the urgent need to address democratic values and the rule of law; reporting how one State did recommend an annual peer review process in 2016 (see EU Council document no.13230/1/16) and one State outlined the need for a more defined mechanism to support the EU Commission and EU Parliament so the existing rule of law documents could be incorporated into a more coherent framework including a permanent State monitoring mechanism but neither recommendation was taken up as part of the ‘annual rule of law dialogue’ process].

²⁰ KONIECZCZ, T. Understanding the Politics of Resentment [online]. *Verfblog*, 2017/9/28. Available at: <https://verfassungblog.de/understanding-the-politics-of-resentment/> 28 September 2017. [Accessed 22 December 2019]; See also at DOI <https://dx.doi.org/10.17176/20170929-135630> [last viewed February 18,2019][noting that the resentment that is sweeping across Europe cannot simply be equated with protest, revolt, and public contestation because unlike the rising *politic of resentment*, these episodes reflect part and parcel of democratic process that supports an open public square. Konieczwicz concludes that the rationale of resentment is distrust with varying degrees of intensity and disdain for the liberal status quo. The *politics of resentment* sets up a competing constitutional doctrine (‘constitutional capture’) that attacks liberal democratic values with its current stigma (eg, support only for status quo) and offers an alternative to the promise of populist narratives.] See further discussion on the *politics of resentment* in reference to the EU proactively creating a new constitutional regime for capitalism outlined later in this discussion.

²¹ BARNHIZER, D. and BARNHIZER, D. *Political Economy, Capitalism, and the Rule of Law*, Cleveland State University, Marshall College of Law, pp. 1–36 [online]. Available at:<https://ssrn.com/abstract=3111111>

Konieczwicz and Hamulák speak to questions of *institutional integrity* within the European Union. Konieczwicz outlines “constitutional capture” as a significant barrier to EU institutional integrity. He asks whether those at the heart of European *disintegration* have actually lost the ‘constitutional imagination’ required to address the complexity of a 2020–2022 transition given its potential and real negative implications on the underlying TEU and the treaty revisions that will be needed.²² The goal is not further EU State member departures under Article 50, but rather, as some States have suggested, a revision to the scope of competence outlined in the TEU agreement by State members in an effort to change operation of the EU and its bureaucracy in Brussels.

Hamulák’s legal analysis of the internal EU Treaty as a “federation of States” or a *heterarchy*, points to a deeper EU institutional engagement along a continuum where current questions concerning sovereignty must be answered for this century.²³ If the nation State is to remain the *primary architect of world order*,

com/abstract=2716372 [pointing out that there is a fundamental symbiotic relationship between a society’s form of economic activity and the nature of the Rule of Law that supports, facilitates and limits that economic activity. The Rule of Law in Western democracies represents a deep set of cultural values where that dynamic interplay defines economic activity by which power is distributed and social goods are created and shared. Suggesting we are a point of transformation that has been occurring over that last decade where capitalist societies will undergo fundamental change, citing SHUMPTER, J. *Capitalism, Socialism and Democracy* [1950]; discussing “Kondratiev Waves” (Nikolai Kondratiev) that impact forms and structures of economic systems where change is not simple change in a degree as a linear model but are dynamic shifts ‘in kind’ where totally new characteristics of economic systems are reckoned with and replace the previous forms of economic systems]; see also BARNHIZER, D. and BARNHIZER, D., *Hypocrisy ad Myth: The Hidden Order of the Rule of Law*, 2009; see also FULLER, L. *The Morality of Law*, New Haven, CT; Yale University Press, 2nd edition, 1969 [addressing the major components of the Rule of Law and its deeply rooted cultural context]

²² *Supra*, Note 20, KONCEWEIZ [suggesting the EU is now being faced with the “constitutional capture” that has been elevated to new constitutional doctrine so much so that the challenge of “Doing Europe” with its overlapping consensus and tolerance of ‘the Other’ has never been both so active or so dramatic – the idea that “this will not happen to us” is no longer an option – in his conclusions, he wonders will the EU finally tune in and listen? Member States are key players in the European Union [EU] and while the EU does have some “state-like” features, it is not legally acting as a nation State in the traditional sense of sovereignty and international law as it operates under the auspices of a treaty agreement and not a Constitution] This author notes that it is the ability of member States in the EU to amend the Treaty that will remain an important sign of political and legal preservation of the sovereign position of member States as the EU moves into the 2020–2021 BREXIT transition. Furthermore, this *idea of “reciprocal flexibility”*, or, of each State’s supervising function of the EU Treaty Agreement, can be read to mean there is also a *possibility of negative Treaty revisions* beginning in 2020–2022 that might be drafted and could seriously limit or change the competence that EU member States currently have accorded to the EU as a regional institution.

²³ HAMULÁK, O. *National Sovereignty in the European Union*, Cham (SUT): Springer Pub., 2016, pp. 47–51. [outlining a detailed summary of the sovereignty issues within the EU that will require

then two institutional matters will need to be addressed. First, the EU as a facilitator of the regional partnership of 27 nation States, will need to structurally update its regional bureaucracy, re-define concepts of solidarity and democracy based on modern 21st century demands, track economic capital and wealth accumulation across its regional boundaries, and intentionally target rules of law and policy change on migration and unemployment throughout the next decade.²⁴ This shift in focus moves the European Union beyond the doctrinal dysfunction or “constitutional capture” of its current bureaucracy to a more responsive and State member empowerment infrastructure that is simultaneously more transparent and legally accountable.²⁵ It is this EU empowerment infrastructure that was vigorously discussed at the December 2019 Council of Europe meeting and that will support redefining democracy as well as the legitimate expression of State sovereignty for this century.²⁶

an intentional level of engagement citing McCormick, Walker and others, that in order to deal with new legal realities that arise in the supranational organization, one will need a lot of legal imagination; offering an in depth analysis of sovereignty suggesting two approaches : the static perceptions of sovereignty based on notions of Westphalia, and the dynamic approach that rests on post-Westphalian notions where sovereignty and authority are understood as non-exclusive ideals so much as that such an understanding does not imply loss of State autonomy] This author notes that the EU Constitutional systems is very complex and there will need to be more open engagement and public conversations in order to address growing populist and EU accountability concerns of member States as they collectively seek to secure the operational future and integrity of the EU post BREXIT.

²⁴ *Supra*, Note 19, PECH, L.

²⁵ NIB, J. *EUs Juncker Hails Macron* [online]. Available at: <https://jonnib.wordpress.com/2017/09/26/eus-juncker-hails-macron-speech-as-very-european>. 26 September 2017. [Accessed December 18, 2019] [suggesting that the Euro-zone will need its own budget and finance minister; wanting to address the divisions between EU richer countries in the West and poorer States on the eastern side of the Continent]; NOTE ALSO: European Commission President, Jean-Claude Juncker initially had called for a EU Summit in early 2019 to detail and tackle the programs that will be re-designed after March 2019 exit when the UK was to begin its 2019–2021 transition period. All of these matters remain on hold in the EU until the resolution of BREXIT occurs; see also KANTER, J. *Far Right Leaders Hate EU Institutions But Like Their Paychecks* [online]. Available at: <https://www.nytimes.com/2017/04/27/world/europe/> 27 April 2017 [noting that many alt-right candidates who despite the EU institution use the European Parliament as a protest platform and collect salaries of around \$100,000 Euros, a generous per diem and an annual staff and office budget in excess of 340,000 euros. So while working to blame the European institutions for being onerous bureaucracies with no democratic accountability they also seem to enjoy the lavish perks of the office while they shun the daily grind of legislative work, miss votes, mock democratic processes on behalf of the EU]

²⁶ *Report of the First European Council* [December 2019]. Available at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS.BRI\(2019\)642811](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS.BRI(2019)642811) [accessed January 10, 2020][Noting that the first European Council was chaired by the new President, Charles Michel, and the main issues on the agenda were climate change, the next Multiannual Financial Framework (MFF), and the proposed Conference on the Future of Europe for 2020–2022. The

The GeoNOMOS presented here offers a legal strategy and framework of liberty to address the legitimate expression of sovereignty in this century, one that secures participatory democracy based on individual liberty at the core function of the State and supports an enterprise of law for a society of global traders. [Diagram 01] It embeds the core function of the State within a Framework of Liberty [dotted lines], by reflecting its cornerstones [justice and equity, human dignity], and embraces its enterprise of law in support of reciprocity and mutuality designed to undergird a new *legal constitution for capitalism*.²⁷

Council on the Future of Europe was noted as a means for engaging the European Parliament and the Commission with a priority to deliver concrete results for the benefits of all citizens and to outline current and future challenges. The idea noted was to engage the past two years of citizen dialogue in a broad consultation with citizens as a more inclusive process so all Member States are involved equally; The President of Croatia is charged with leading this EU empowerment and dialogue process.], see also DRACHENBERG, R. and ANGHEL, S. Outlook for the Meeting December 2019, Available at: <https://epthinktank.eu/2019/12/10/outlook-for-the-meetings-of-eu-leaders-on-12-13-december-2019/> [discussing the proposal for a Conference on the Future of Europe. The idea was first suggested by the French President, Emmanuel Macron, in March 2019, and was subsequently supported by the new Commission President, Ursula von der Leyen, before her election by the EU Parliament. She indicated that she would also consider Treaty [TEU] change if the outcome of the conference were to require such a step. The notion of Treaty change elicited little enthusiasm from EU Heads of State or Government when presenting their views on the Future of Europe in the European Parliament in 2018–2019. Recently, France and Germany have made a joint proposal outlining their views. For more information, please see the EPRS Briefing, Preparing the Conference on the Future of Europe. As there is currently no agreed position between the Member States, the European Council is expected to invite the incoming Council Presidency (Croatia) to work towards defining a Council position on the content, scope, composition and functioning of such a conference. This position is likely to emphasize that the conference should as a matter of priority focus on the development of the EU's policies in the medium and long term, building on the recent citizens' dialogues. The European Council is likely to underline the need for an inclusive process and shared ownership by European institutions and Member States. In this context, the European Council is also expected to recall the importance of implementing the prior *Strategic Agenda 2019-24*]

²⁷ All of the forms of capital and these transitions are highly integrated within the GeoNOMOS core function of the State [see diagram-economic, social and human capital functions] and the GeoNOMOS *framework of liberty* as that State strives to fully integrate and continuously balance its three capital resources along the functionality of its domestic vertical axis and its international horizontal axis. Eliminating the current BREXIT political risk would require a broader recognition by the EU of securing new ways to design, develop and balance the utilization of the State's three primary capital resources [economic, social and human capital] at the core of every EU member State. The *continuum of sovereignty* proposed in this article begins to outline such a process that could be simultaneously accomplished during a 2020–2022 global transition. See also, OROURKE, K.A.C. "Sovereignty Post-Brexit, The State's Core Function and EU Reintegration"; *European Studies: The Review of European Law, Economics and Politics*, 2017, vol. 4, pp. 140–164 [noting in detail the definitions and structure of a State's three forms of capital which must be consistently balanced within the core function of the State at the intersection of its vertical and horizontal axis and within the framework of liberty, its four cornerstones and enterprise of law.]

The key to successfully managing this dynamic beginning in 2020 is a balanced engagement between the EU and its institutional support first and foremost for stability of each and every nation State – and less on building and securing Brussel’s bureaucracy.²⁸[Diagram 01] Shared sovereignty or “models of heterarchy” can support regional operations only if the nation State is secure at its core function within the framework of liberty and its enterprise of law. The GeoNOMOS offers a possible answer to tensions created by the *politics of resentment* because it simultaneously secures the core function of the State at the intersection of its domestic function and its international function.

The GeoNOMOS depicts a *continuum of State sovereignty* which operates along a *vertical axis* as the State engages domestic level issues and simultaneously along a *horizontal axis* as it engages international level issues within the international community of States.²⁹ The stability of the State core function lies in continuously balancing all three of its capital resources as the foundation for the social contract embedded in democracy. [Diagram 01] This continuum is distinguished from a State whose only focus and all of its predominant activity is to develop and utilize any and all forms of economic capital at any cost.

In contrast to Diagram 01, a State, whose efforts are exclusively linked to economic capital acquisition, accumulation and utilization at any cost, a focus that includes all the entanglements of public austerity and private direct foreign investments mandated under the “one size fits all” approach of the neoliberal paradigm [c.1980–2010], will become so dysfunctional that the State ultimately fails. As massive shifts in public sector funds and program budgets are moved to

²⁸ The responsibility for securing the four cornerstones that anchor the framework of liberty rest with the State. The State affirmatively creates conditions within its domestic jurisdiction [vertical axis] where justice [ethics] and equity prevail as reflected by these two anchors located on the lower portion of the liberty framework.[see diagram] When the conditions for justice and equity occur routinely as part of the State’s single core function and operate in meaningful and consistent way within a domestic jurisdiction, then individual autonomy as an expression of human dignity [comprised of individual choice and individual capability/resource development] is supported and actively anchored by the two cornerstones on the upper half of the framework of liberty. Thus, the partnership depicted by the social contract between a “caring” State and its people [depicted by the vertical axis] and based on the universal principle of mutual benefit, operates as the State’s single core function, exists inside the framework of liberty, and continually reflects the operative and proscriptive components in support of the principle of human dignity.

²⁹ A continuum is referenced as the basis of this new typology for sovereignty because it represents a more flexible set of options given the range of possibilities in terms of how an individual State interacts with some sense of legitimacy on behalf of the people it is governing and interacts as a member of the international community of States; there is no limit to the possibilities offered as part of this proposal for a continuum of State sovereignty so long as it operates within a framework of liberty. See diagram and discussion detailed in this commentary. See definition of *continuum* at <http://merriam-webster.com>

privatization, there are withering considerations of the social capital and human capital resources needed to continuously support civil society. For the 2016 BREXIT vote, citizens there increasingly felt they were being “left behind” as social programs, job creation and total industries disappeared from the economy with no planned replacements. In this repeated scenario, the search for economic capital and its development and utilization becomes increasingly dysfunctional as the distortion and imbalance at the core function of the State pulls the State away from the Framework of Liberty, and its enterprise of law that supports the social contract of democracy – in essence, the State has failed to protect the promises of democracy. [Diagram 02]

The shifting nature of EU operations and definitions of sovereignty resulting from BREXIT raise old and ongoing debates about *differentiation* and *integration* – how much differentiation is needed to respect national governing structures of State EU members and how much policy and procedural integration is required to operate the EU on a consistent regional basis. BREXIT has forced the issues related to *differentiation* and *integration* [or in the case of BREXIT, *differentiation* and *disintegration*] which has become the new normal in the European Union [EU] and remains one of the most crucial matters in defining the future of the European Union. A certain degree of differentiation has always been part of the European integration project since its early days. The Eurozone and the Schengen area have further consolidated this trend into long-term projects of differentiated integration among EU Member States. A number of unprecedented internal and external challenges to the EU, however, including the financial and economic crisis, the migration phenomenon, renewed geopolitical tensions and BREXIT, have reinforced the belief that more flexibility and possibly TEU changes are needed within the complex EU machinery to redefine the legitimate expression of sovereignty.

The GeoNOMOS outlined in this commentary [Diagram 01] is a graphic representation of the next evolution for the legitimate expression of State sovereignty to protect participatory democracy and individual liberty because of its flexibility – it differentiates several important principles. One, it posits conceptually that for all human activity, enterprise and undertakings, liberty represents the outer boundary or framework [dotted line box] of any and all such endeavors. Beyond this *framework of liberty* nothing can, nor does exist, and all activity with the State falls within the four corners of this frame by the rule of law defined at its outer boundary by liberty. Two, the GeoNOMOS distinguishes, in contrast to other models which seek to develop an economic/legal model, or some other Westphalian models for nation States from times long past, that the nation State and the nation State alone can function as a legal guarantor and can only vouchsafe liberty both toward the individual and also toward other nation States

and supranational organizations who operate with semi-governmental character. Third, the proposed GeoNOMOS presented here designs a *single core function* for the State in relationship: [a] to its citizens [*vertical axis*] from whom it seeks domestic legitimacy in order to govern, and, [b] to its engagement in the global marketplace [*horizontal axis*] from an intentional long term strategic and sustainability perspective as a member of the international community of States. The GeoNOMOS supports the creation of a new *legal constitution of capitalism* designed to replace the first dominant legal constitution of capitalism designed and extensively codified in the UK and across Europe to support colonialism.

3. Affirming democracy and a new legal constitution for capitalism

Democracy and its values and capitalism have a long and tortured, almost parasitic, symbiotic relationship in history of political economies that will need to be confronted around the concept of reciprocity, to be corrected based on notions of mutuality, and to be differentiated into the 21st century.³⁰ The definition of the democracy established for this century, unlike democracy directly linked to capitalism in the 20th century or colonialism in the 19th century, must be defined separate and distinct from the market dynamics of capitalism for a sustainable global compact to emerge in the 21st century. The EU as a collective and regional institution can best ensure democracy is defined on values that are relevant today. Primarily, this will require new EU policies and practices that are consistent to support continued State access to economic capital development and utilization without the entanglements associated with the neoliberal “ideology”, an economic model of the 1980s that became a political ideology applied to every corner of the globe. This also means ultimately a significant rearrangement of the EU’s almost forty-year use of linking economic capital development to

³⁰ *Supra*, Note 21, BARNHIZER [noting that the Rule of Law element used to create a framework for political economy in the 21st century will involve changing political systems of deeply held beliefs and values that do not always function on pure logic. The intersection of economic systems and political beliefs where the rule of law is created must be secured in a way so that citizens can fully participate in their civil societies and have their individual liberty protected. The intertwined relationships of legal, political, business and economic issues form a deeply integrated system and will require an interdisciplinary approach] AUTHOR NOTE: The GeoNOMOS as discussed in this article reflects this integration as part of the State’s core function where vertical and horizontal activity supports participatory democracy within a framework of liberty and its enterprise of law. A new Legal Constitution for Capitalism would require taking the political and power realities of this schematic rule of law and build those considerations into strategies for positive adaptation in a new paradigm for capitalist globalization.

severe public sector austerity measures that harmed human and social capital development. For example, an alternative empowerment of the EU “collective imagination” could use its dominant regional presence to establish as one of its 2022 guiding principles, a foundation for a new *legal constitution for capitalism* that regulates capital and referees global tax schematics for the entire region.³¹

The scope of 21st century sovereignty and its legitimate expression is outlined in the GeoNOMOS to reflect the “public square of democracy” where the European Union must strive to redefine and reintegrate the core values of participatory democracy and individual liberty not just for its 27 State members as a regional entity but also for each of the member States and its own civil society configuration. This dialogue is not based on ideals defined from centuries gone by, but reinvigorated by the demands of the 21st century context and the correction of the “politics of resentment”. Confronting the falsehood of an “illiberal” democracy with relevant context definitions for this century is essential. Solidarity and liberty as well as the content of the social contract linked to democracy and its rule of law is not the same as it was fifty years ago.³² The modeling and legal empowerment of a new State level scaffolding could intentionally be a hopeful vision for The Conference on the Future of the EU as announced by the Council on Europe at its December 2019 meeting – articulating a focus on engaging both citizens and national Parliaments alike in a process and review of TEU provisions and definitions of democracy for this century.³³

³¹ HONT, I., KAPOSSY, B. and SONENSCHER M. *Politics in Commercial Society*. Cambridge, MA: Harvard University Press, 2015; see OXFAM, *Working for the Few: Political Capture and Economic Inequality*. Oxford: Oxfam International, 2014; see also ZUCMAN, G. *The Hidden Wealth of Nations*. Chicago: University of Chicago Press, 2015; see REICH, R. *Saving Capitalism For The Many Not The Few*. New York: Knopf, 2015; see also SOSKICE, D. Capital in the Twenty First Century: A Critique. *British Journal of Sociology*, 2014. Vol. 65, no. 4.

³² The connection between the Rule of Law as existing in models of democracy and its economic system is that the Rule of Law is a belief system underlying the integrity of the public and private institutions by which society is ordered and operates; it is the quasi-inchoate creed based on values and principles that allow the system to operate and evolve. The inchoate creed of the neoliberal paradigm [c1980–2010] of capitalist globalization was an economic model that became a political ideology, a one size fits all economic system, that gradually no longer respected the democratic function of the State to secure participatory elections and to protect individual liberty including longstanding economic and social human rights. The economic institutions created to support the neoliberal paradigm [c1980–2010] dislocated the traditional power nodes of the nation State and became a “global” institution that remained outside the control and accountability of a globalized State. A new Legal Constitution for Capitalism [and its rule of law] created in this century could begin to self-correct these dynamics.

³³ *Supra*, Note 24, *Report of the First European Council* [December 2019] [these measures to create a process that is more inclusive and representative of citizen concerns is directly related to curbing and redirecting the volatile energy of the politics of resentment and to redefine engagement in a more meaningful way for EU citizen across the Continent. *The Conference on the Future of*

Continued application by EU institutional practices of an outdated neoliberal economic ideology can no longer meet the demands of the “politics of resentment” nor reflect a new democratic scaffolding for the future of the EU. The new *legal constitution for capitalism* can begin to redefine democracy for the 21st century not based on a “welfare state” model from post-World War II or a model of “illiberal” democracy yet to be defined, but based on the 21st century definitions that include the cornerstones of solidarity, mutuality, reciprocity and human dignity. These cornerstones are clearly depicted in the functional GeoNOMOS model as it anchors the core function of the State and the framework of liberty.

The engagement for a re-integrated EU will follow the demands of a *shared sovereignty* in the transition period [2020–2022] but the transition will not be an easy one for the UK nor for the European Union. As noted by Hamulák, the remainder of 27EU will be forced to reconsider the scope of member inter-connectedness to the EU’s *heterarchy* [model of “shared sovereignty”].³⁴ This reintegration of EU internal political partnerships will adjust legal TEU treaty

Europe is a political body of the European Commission and the European Parliament, announced in the end of 2019, and since then being prepared to determine new agreements, or amendments to the existing ones, on the future of European democracy during 2020–2022. The Conference consists of the Parliament, the Council and the Commission and is tasked to draft new EU laws and changes to the EU treaties. It should also involve citizens. [Not to be confused with *Convention on the Future of Europe* (2001–2003, officially *European Convention*), or *European Convention* (1999–2000)]; See also summarized information on the content and design of the upcoming Conference on the Future of Europe from the December 2019 meeting; Available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/12/12/european-council-conclusions-12-december-2019/> [The European Council considered the idea of a Conference on the Future of Europe starting in 2020 and ending in 2022. It asked the Croatian Council Presidency to work towards defining a Council position on the content, scope, composition and functioning of such a conference and to engage, on this basis, with the European Parliament and the Commission. The European Council recalls that priority should be given to implementing the Strategic Agenda agreed in June, and to delivering concrete results for the benefit of our citizens. The Conference should contribute to the development of our policies in the medium and long term so that the EU can better tackle current and future challenges. Conclusions – 12 December 2019 EUCO 29/19 4 EN. The Conference should build on the successful holding of citizens’ dialogues over the past two years and foresee broad consultation of citizens in the course of the process. It needs to involve the Council, the European Parliament and the Commission, in full respect of the interinstitutional balance and their respective roles as defined in the Treaties. The European Council underlines the need for an inclusive process, with all Member States involved equally. There should be shared ownership by EU institutions and Member States, including their parliaments]

³⁴ *Supra*, Note 19, Hamulák [outlining a detailed summary of the sovereignty issues within the EU noting that the numerous coexisting legal systems and power networks challenge the nature of sovereignty but does not mean that EU member States have no sovereignty; painting a new “grey zone” where sovereignty is treated as a “category” and when EU reintegration occurs there are going to be changes; analyzing the notion of ‘late sovereignty’ which better aligns with the countries who have only recently in the late 20th century come out from under the Brezhnev

commitments and perhaps even the reordering of Constitutional competence currently accorded to the EU for an entire range of matters. State members want to ensure there is room for relevant and meaningful *differentiation* in EU institutional apparatus that creates a pathway for the uniqueness of each sovereign as it legitimately expresses its role, historical culture and development needs in the region. The implications for human rights; national and regional security; the environment and climate change; financial, tax and economic capital planning systems within the regional bloc will all potentially be affected.³⁵

Given the scope of economic capital negotiations for the remaining 27EU that are already delineated in the UK-EU Declaration process, there can be no rational discussion on “*shared sovereignty*” in the 2020–2024 transition without a frank discussion about the uneven hand of the current models of globalization and neoliberal capitalism. Proposals by many economists including Milanovic, Soslke, Streeter, and Krugman for new models of capitalism are not a new phenomenon in economic academic circles.³⁶ So too as proposed by a range of economic and legal scholars, a new *legal constitution for capitalism* will be required in this century – one that models the rule of law within a framework of liberty designed to strengthen the State core function and its enterprise of law.³⁷

Doctrine, and thus, State sovereignty and autonomy are more accentuated by these member States who are more careful about any weakening of their State sovereignty]

³⁵ Within the structures of the EU, even if Article 50 proceedings make a secession of a member nation-state essentially *de jure* possible, we suggest that such a step is *de facto* impractical and perhaps imprudent within the context of a GeoNOMOS model as set forth in this Commentary; and also otherwise, because it would tend to cause a potential ripple effect which might lead to an unraveling and *disassociation* of the whole, regardless how great its other resources and forms of capital might be. A region which had shown in history its own weaknesses in co-existing as separate, independent nation-states, where war had raged after war for a long period in history, had, for a period in time, tried to learn how not only to co-exist as one large system of governance, only to return to the old ways of “separate, but equal”.

³⁶ MILANOVIC, B. *Capitalism Alone: The Future of The System that Rules the World*. Cambridge: Harvard University Press, 2019 [Arguing that capitalism triumphs because it works but has a huge moral price and the model of liberal capitalism in the West falls apart under the strain in inequality and capital excess; dismissing some single outcome that will solve the problem, he suggests a multifaceted approach that is more State-led]; see also MILANOVIC, B. *Global Inequality: A New Approach for the Age of Globalization*. Cambridge: Harvard University Press, 2016 [reviews timelines of where global money went between 1998–2008; and a country-by-country analysis; expressing a concern that there is a move now back to 1820 when main source of inequality was class rather than location; making ten reflections for the future including a system of “predistribution” of assets and education as opposed to the traditional “tax and spend” models of the West]; see also MILANOVIC, B. *Worlds Apart: Measuring Global and International Inequality*. Princeton, NJ: Princeton University Press, 2005 [noting the problem with a one size fits all economic analysis in relation to poverty, income distribution and modeling inequality in system where 1% earn twice as much as the bottom 50 %]

³⁷ *Supra*, Note 11, Grewal.

The need for a new “rule book” for economic capital [the new *legal constitution for capitalism*] as discussed here embraces Piketty’s definition of capitalism as a ‘dynamic legal system’ that continually ‘transforms society, its social relations and its socio-economic order’.³⁸

Piketty has forever changed the nature of economic modeling, statistical analysis, and its legal implication for State level economic capital management and wealth distribution.³⁹ By necessity and by implication, the transformation Piketty references also redefines the development and utilization of the three essential capital resources depicted at the core of every State within the Framework of Liberty. [Diagram 01] The key configuration in the GeoNOMOS that underpins the social contract of democracy is keeping these three essential capital resources in a continuous state of balance within the core function of the State and inside the framework of liberty. All international public sector and private sector corporations and NGOs must also function within the framework of liberty and work diligently and in good faith to uphold the framework’s cornerstones of justice, equity, and human dignity.

In contrast to the neoliberal paradigm [c1980–2010] for capitalist globalization⁴⁰, the new *legal constitution for capitalism* would first define the legal

³⁸ BOUSHEY, H., DELONG, J. B., STEINBAUM, M. [eds.]. *After Piketty: The Agenda for Economics and Inequality*. [Cambridge, MA: Harvard University Press, 2017]; See PICKETTY, T. *Capital in the Twenty-First Century*, trans Arthur Goldhammer [Cambridge, MA: Belknap Press of Harvard University, 2014]; see DAVID, M. and MONK, D. B. [eds.]. *Evil Paradieses: Dreamworlds of Neoliberalism* [New York: New Press, 2007]; see OXFAM, *Working for the Few: Political Capture and Economic Inequality* [Oxford: Oxfam International, 2014]; see SOS-KICE, D. “Capital in the Twenty First Century: A Critique”, *British Journal of Sociology* [Vol 65; No.4] pg 650–666 [2014]; see STIGLITZ, J. *Free Markets and the Sinking of the Global Economy* [London: Allen Lane, 2010]; see HARVEY, D. *The Enigma of Capital: And the Crisis of Capitalism* [London: Profile Books, 2011].

³⁹ KRUGMAN, P. Why We’re in a New Guilded Age. In: BOUSHEY, H., DELONG, J. B., and STEINBAUM, M. (eds.). *After Piketty: The Agenda for Economics and Inequality*. Cambridge, MA: Harvard University Press, 2017, pages 60–75; 61–63 [suggesting that the tracking of concentrations of income and wealth has revolutionized our understanding of long term trends in inequality; noting that Piketty research indicates we are not just on the path to 19th century levels of inequality, we are on the path of patrimonial capitalism where the commanding heights of the economy are not controlled by talented individuals but by family dynasties; and since 1980’s a large amount of the economic gains went to the top end of the income distribution with families in the bottom half lagging behind; Krugman attributes the level of uneven distribution to government action related to tax policy and income transfers.]

⁴⁰ SCHAFER, A and STREETER, W. (eds.). *Politics in the Age of Austerity*. Cambridge: Polity Press, 2013. [notes that democratic polity comes under significant pressure in the age of austerity promoted by the neoliberal paradigm of globalization. Domestic budgets are squeezed to accommodate financial markets as government responsiveness to voters severely declines. Democracy itself becomes incapacitated when citizen voters cannot influence the course of governments. For three decades now OECD countries have run huge deficit and accumulated

parameters of economic capital development and utilization and then, using those parameters, establish a new sustainable global market paradigm or global

debt which in turn reduces national budgets for discretionary spending and social capital investment]. For context discussions of the last century on neoliberalism]; See STREECK, W. The Politics of Public Debt: Neoliberalism, Capitalist Development and the Restructuring of the State, in *German Economic Review* [August 2013]; Available at: <https://doi.org/10.1111/geer.12032> [Rising public debt has been widespread in democratic-capitalist political economies since the 1970s, generally accompanied among other things by weak economic growth, rising unemployment, increasing inequality, growing tax resistance, and declining political participation. Following an initial period of fiscal consolidation in the 1990s, public debt took an unprecedented leap in response to the Great Recession [2008–2010]. Renewed consolidation efforts, under the pressure of ‘financial markets’, point to a general decline in state expenditure, particularly discretionary and investment expenditure, and of extensive retrenchment and privatization of state functions]; see also CERNY, Phillip. “Globalization and the Erosion of Democracy” in *European Journal of Political Research* [vol 36; Issue 1; pg 30–47] [1999], Available at: <https://doi.org/10.1111/1475-6765.00461> [concluding that despite the apparent development and spread of liberal democratic state forms in the 1980s and 1990s, possibilities for genuine democratic governance overall declined. First, the emergence and consolidation of modern liberal democracy was inextricably intertwined with the development of the nation-state and was profoundly socially embedded in that structural context. Secondly, in today’s globalizing world, cross-cutting and overlapping governance structures and processes increasingly took the form of private, oligarchic (and mixed public/private) forms; hegemonic neoliberal norms delegitimized state-based governance in general; and democratic states lost the policy capacity necessary for transforming democratically generated inputs into authoritative outputs. Consequently, robust constraints continue to limit the potential for (a) re-institutionalizing the ‘democratic chain’ between accountability and effectiveness, (b) rearticulating and diminishing the multi-tasking the essential public character of authoritative institutions and (c) renewing the capacity of current authoritative State agents to make the side-payments and to undertake the monitoring necessary to control free-riding and assimilate alienated groups. Rather than a new pluralistic global civil society, globalization led to a growth in inequalities, a fragmentation of effective public governance structures and the multiplication of quasi-fiefdoms reminiscent of the Middle Ages]; See AIDAN, S. Regan. *Political Tensions in Euro Varieties of Capitalism—The Crisis of the Democratic State in Europe*, Working Paper EUI MWP, 2013/14 at European University Institute, Available at: <https://hdl.handle.net/181428177> [outlining The EU response to the financial sovereign debt crisis in the Eurozone led to the democratic crisis of the nation State as it exposed a tension between national and supranational power in multi-level polity and opened a conflict between the EU core and the periphery nations of the EU. Shifts by EU member States in internal devaluation also impacted the burden of adjustments to fiscal and labor market policy at the State level resulting in national government cutting public spending and imposition of structural reforms on labor markets. Imposing one-size-fits-all adjustments to a wide variety of economic problems across a variety of national capitalism really is the source of the EU crisis leading to electoral volatility and a crisis in legitimacy for the democratic state in Europe]; See also O’ROURKE, K.A.C. “Sovereignty Post-Brexit, The State’s Core Function and EU Reintegration”; *European Studies: The Review of European Law, Economics and Politics*, 2017, vol. 4, pp. 140–164 [discussing in depth the demise of the neoliberal paradigm (c1980–2010) of capitalist globalization; providing extensive research]

compact for this century.⁴¹ That international private sector as well as the international public sector trade and capital investment should be a *means to an end*, not an end in itself, is not a radically new idea.⁴² As Rodrik and others have noted, capitalist globalization should be a legal instrument for achieving the goals that each State's civil society seeks: prosperity, stability, freedom and quality of life.⁴³ Furthermore, Rodrik distinguishes a dominant role for the nation State in relation to the principles of democratic decision-making which is the foundation for the international economic architecture and notes that when States are not democratic, the entire scaffolding collapses and one can no longer presume a country's institutional arrangements reflect the preference of its citizens.⁴⁴

⁴¹ *Supra*, Note 11, Grewal.

⁴² RODRIK, D. *The Globalization Paradox : Democracy and the Future of the World Economy*. New York: W.W. Norton & Co., 2011; pp 231–242, 245 [noting that it is time to move beyond the neoliberal paradigm; setting out a series of statements in support of a State's right to protect their own social arrangements, regulations and institutions; and suggesting that trade is a means to an end, not an end in itself so that globalization should be an instrument for achieving the goals that a society seeks: prosperity, stability, freedom and quality of life]; see generally MILGATE, M., STIMSON, S. C. *After Adam Smith: A Century of Transformation in Politics and Political Ideology*. New Jersey: Princeton University Press, 2009.

⁴³ *Ibidem*, RODRIK at 237–239; See also TIROLE, J. *Economics for The Common Good*. New Jersey: Princeton University Press, 2017; [outlining the moral limits of the market at pp 33–50; creating a modern State at pp 155–169, and addressing the challenges to EU function at pp. 265–289]; see also BOUSHEY, H., DELONG, J. B. and STEINBAUM, M. (eds.). *After Piketty: The Agenda for Economics and Inequality*. Cambridge, MA: Harvard University Press, 2017.

⁴⁴ At the same time, with a focus on economic capital development and utilization, the author begins to outline the struggles at the level of the nation State as it begins to adjust to a more integrated model of capitalism that balances economic capital at its core function with equal measures of financial, policy priority and broad political support for the development and utilization of human and social capital. See also RODRIK, D. *The Globalization Paradox : Democracy and the Future of the World Economy*. New York: W.W. Norton & Co., 2011; pp 231–242, 245 [discussing a dominant role for the nation State in relation to the principles of democratic decision-making which is the foundation for the international economic architecture; noting that when States are not democratic this scaffolding collapses and one cannot presume a country's institutional arrangements reflect the preference of its citizens]; See also RODRIK, D. *The Fatal Flaw of Neo-liberalism* [online]. Available at: <https://www.theguardian.com/news/2017/nov/14/the-fatal-flaw-of-neoliberalism-its-bad-economics>. [November 14, 2017] [Noting Neoliberalism and its usual prescriptions – always more markets, always less government – are in fact a perversion of mainstream economics. Rodrik suggests that there is nothing wrong with markets, private entrepreneurship or incentives – when deployed appropriately. Their creative use lies behind the most significant economic achievements of our time. He notes as “we heap scorn on neoliberalism, we risk throwing out some of neoliberalism's useful ideas. The real trouble is that mainstream economics shades too easily into ideology, constraining the choices available and providing cookie-cutter solutions. A proper understanding of the economics that lie behind neoliberalism would allow us to identify – and to reject – ideology when it masquerades as economic science. Most importantly, it would help to develop the institutional imagination badly need to redesign capitalism for the 21st century”]; see generally MILGATE, M., STIMSON, S. C. *After Adam*

Piketty's study really is one of "modern" inequality documenting where there is a widening difference in income and wealth among people of *equal juridical standing*.⁴⁵ This disparity among people of *equal juridical standing* will be a primary legal challenge for the EU in re-defining democracy in this century. Piketty clearly has set out three negative implications of economic inequality on the function of democracy, implications that are clearly reflected in the *politics of resentment* and need to be addressed: First, inequality violates the basic *principle of equity* on voice and representation so that when citizens do not have equal voice and influence, the skewed nature of control over economic resources "poisons the promise" of equal representation. Afterall, according to Tomasi, individual *economic liberty* is just as important to freedom as all other liberties embraced by classical liberal thinkers. For Hurst, the corporate charter and what a State Constitution chooses to protect may be two different legal applications of the rule of law in terms of human rights and economic relations.⁴⁶ For the 21st century the disparity between corporate charters granted by States and the rule of law enounced in the Constitution needs to be realigned in support of a rule of law that prioritizes the State core function to balance all three forms of capital resources in a secure and consistent manner. In that way participatory democracy that protects individual liberty remains a high priority of the State as the three forms of capital at the core of the State also supports the social investments needed to secure democratic principles first and corporate interests [global trade]

Smith: *A Century of Transformation in Politics and Political Ideology*. New Jersey: Princeton University Press, 2009.

⁴⁵ PIKETTY, T. *Capital in the Twenty-First Century*, trans Arthur Goldhammer [Cambridge, MA: Belknap Press of Harvard University, 2014].

⁴⁶ TOMASI, J. *Free Market Fairness*. New Jersey: Princeton University Press, 2012. [defending individual economic liberty from legal or historical perspective of political philosophy; trying to find common ground between John Rawls and Friedrich Hayek the concept of 'free market fairness' aka market democracy]; See also CORRE, J. I. The Arguments and Reports of *Darcy v Allen*", *Emory Law Journal*, 1996, vol. 45, pp. 1261,1325 [speaking to *Darcy v Allen*, 11 Co. Rep. 84b, 77 Rep.1260 [K. B. 1603]; pointing out that the original English Cokes' Report of an enduring nature on the questions of individual liberty arising out of the *Darcy* case in 1603; also noted the privileged nature of monopoly and its distortion on the common good, ultimately hurting the public square of civil society]; see also NACHBAR, T. B. Monopoly, Merchantilism, and the Politics of Regulation. *91 Virginia Law Review*, 2005, vol. 91, pp. 1324–1345; see also SANDEFUR, T. *The Right to Earn a Living: Economic Freedom and the Law*. Washington DC, CATO Institute, 2010, p. 20; see also SEIGAN, B. H. Protecting Economic Liberties, *Chapman Law Review*, 2003, vol. 6, pp. 43, 50. [relying on notions of substantive due process]; as general reference see JONES, F. D. Historical Development of the Law of Business Competition, *Yale Law Journal*, 1926, vol 36; HURST, J. W. *The Legitimacy of the Business Corporation in the Law of the United States 1790–1970*. New York: The Lawbook Exchange, 2004 [noting at page 16 that what the corporate charter gave and what a Constitution protects is not just an official license but also a pattern for organizing certain human relations].

to follow [and not the other way around as is the case in the neoliberal paradigm (c1980–2010) and its ideology].

Second, as Picketty notes, if inequality means that due to neoliberal mandates for public austerity programs, a democratically elected government is less able to provide public goods, respond to a public problem, or have the capacity to promote broadly shared prosperity, then, there is a deeply negative impact on political processes and democracy.⁴⁷ Third, excessive inequality promotes violence, high levels of vitriol and angry sentiments in the public square of democracy, that in turn, ultimately undermines the ability to define emerging legally shared democratic principles and to secure the process of balancing the nation State at its core.⁴⁸

Picketty and other scholars who care about democracy, outline the basic principles of justice and equity that align and point to imbalances in the current global socio-economic order evidenced by the growing wealth inequality and distorted income distribution.⁴⁹ Furthermore, they offer several responsive options for a new *legal constitution for capitalism* that could be coupled with global and regional tracking mechanisms on wealth and thus, work in tandem with the rule of law to build a responsive State focused – EU institutional reintegration for this century.⁵⁰ Picketty's work and his definition of capitalism has forever changed the

⁴⁷ *Supra*, Note 41, Picketty.

⁴⁸ *Supra*, Note 11, Grewal at 481–483; AUTHORS NOTE : Terminology and definition of constitutional terminology as noted by Grewal sets the foundation for a new legal constitution for capitalism in this century but what of the public square of democracy at the core of the State in the GeoNOMOS and where the four cornerstones of the framework of liberty [justice, equity, individual choice and capabilities] matter in the daily function of civil society?

⁴⁹ Many times the policy imposition at the regional and international levels push aside or “condition” global and regional financial capital and foreign investment on limiting the full exercise of State sovereignty at the domestic [vertical axis] where priorities for social capital, public assets and safety nets , employment and local human capital development issues are contractually forced into the marketplace or are mandated to be legislated to the sidelines within the State government structures in favor of dominance by forces viewed by many States as operating outside the State's *vertical axis* and strictly viewed as an evil necessity for international engagement along the *horizontal axis*. Furthermore, the key issues surrounding these mandatory State level “structural adjustment programs” demanded by non-State actors do not always align within the justice and equity cornerstones of the *Framework of Liberty* or the participatory democratic foundations of the GeoNOMOS as outlined in Part I of this article. This Commentary is not focused on some grand macroeconomic theory or market dynamic strategy. It is the web of politics and certain constitutional regimes that result in the continued dominance of capital over the rest of the State's core function as set out in the GeoNOMOS continuum. This is why a balancing construction of a legal constitution for capitalism would be so beneficial.

⁵⁰ *Supra*, Note 41, Picketty [see specifically other tools Picketty discusses such as the *World Wealth Income Database* and the *Global Wealth Register* as supportive EU mechanisms in designing a *peer review monitoring and enforcement system* for member State partners. These ideas will be contested and rightly so – it is one way to begin to address the well documented and ongoing

nature of economic modeling, statistical analysis, and its implication for State level economic capital management and wealth distribution.⁵¹

The new definition of capitalism as a *dynamic legal system* supports the continual transformation of society, its social relations and its socio-economic order.

The flexibility of the GeoNOMOS allows for each 27 EU member to design its core function within a social contract of democracy along a vertical axis while simultaneously operating along the horizontal axis to structure and referee a society of global traders. By necessity and implication, this transformation also redefines the required balancing of the three essential capital resources at the core of every State. The rule of law establishes the operational boundaries for a *legal constitution for capitalism* within the core function of every State where the vertical and horizontal activity continuously intersect. [Diagram 01] The 2020–2024 regional debates on The Conference for the Future of the European Union must consistently strive to more openly define and address the embedded construction of a *legal constitution for capitalism*, first, as a “*socioeconomic system*” based on the rule of law [and not just a projected economic model or some outdated political ideology] and second, as an “*operation*” that has an autonomous macroeconomic dynamic function within the EU itself regionally that one State acting alone cannot possibly impact.

The divergence that Piketty discusses between return on capital and the average growth rate is a formula each EU State member will need to consider at the crossroads of their respective domestic / *vertical axis* and their international/ *horizontal axis* in the GeoNOMOS. This dynamic evaluation process exists because each of 27EU partners also has a State civil society that consists of global traders who need to operate within an enterprise of law inside the GeoNOMOS *framework of liberty*. The criteria used by Grewal in his work on creating a new *legal constitution for capitalism* can be designed and codified as an enterprise of law operating within the GeoNOMOS framework of liberty.⁵² It becomes the

economic capital demands, unemployment, sluggish growth, and wealth disparity]; see also DAVIS, M. and MONK, D. B. (eds.). *Evil Paradises: Dreamworlds of Neoliberalism*. New York: New Press, 2007 ; see OXFAM, *Working for the Few: Political Capture and Economic Inequality*, Oxford: Oxfam International, 2014; see SOSKICE, D. Capital in the Twenty First Century: A Critique, *British Journal of Sociology*, vol. 65 no.4, pp 650–666; see STIGLITZ, J. *Free Markets and the Sinking of the Global Economy*. London: Allen Lane, 2010; see HARVEY, D. *The Enigma of Capital: And the Crisis of Capitalism*. London: Profile Books, 2011.

⁵¹ Ibidem, Piketty.

⁵² *Supra*, Note 11, Grewal [noting that the first constitution of capitalism was codified to support colonialism across colonies, local communities and global markets everywhere It is the legal foundation the underpins all social relations or social processes that comprise the economic system of capitalism. Yet, the focus on *how* legal constitutions were written to protect social processes and to secure the economic system of capitalism also incorporates key distinctions that remain important today for any newly drafted legal constitution for capital – the key distinctions

enterprise of law that functions inside the framework of liberty for every EU State member who accedes or reaffirms its legal commitments to the TEU in the post-BREXIT period.

It is at this intersection inside the State core function where the *vertical axis* meets the *horizontal axis* that creates the synergy for a new *legal constitution for capitalism*.⁵³ This is the crossroads where the increase in accumulation of economic capital in all its forms continues, and where the concentration of the private ownership of capital continues to grow – not only at the State’s domestic level along the *vertical axis* where most people are bound geographically and will remain, work and live for most of their lives, but also at the State’s international level function along the *horizontal axis* where States routinely intersect with private and public international entities in the global marketplace and beyond.

4. Conclusion

The future of the EU requires a new surge of “constitutional imagination” and a new scaffolding defining principles of democracy. Application of an outdated neoliberal economic ideology to this democratic scaffolding can no longer redress the growing *politics of resentment*. The fabric of EU-State partnership is unraveling from the same *politics of resentment* that fuels BREXIT and will require a more concerted effort to address a two key points: [1] how to outline a new definition or set of values for democracy that includes the primary affirmative duty of the State to secure participatory democracy based on individual

will always remain between the distinguishing definitions of “public” and “private” as well as the terms “sovereign” and “government”. However, the challenge remains – a new legal constitution for capitalism will need to define these terms in light of standardized contract law principles and financial transaction centers of the marketplace in the 21st century. Although initially these historical distinctions were designed to move the market from under the rule of the monarchical type of State [including the Church], ramifications of these early legal regimes still regrettably may negatively impact how capital and theories of capitalism function in socio-political settings of today]

⁵³ Ibidem. Grewal [According to Grewal and others, the first legal constitution for capitalism was based on the rule of law as it was designed historically and then codified to support colonialism in the past. For a modern EU interpretation, by using the term “constitutional imagination” as suggested by Konciewicz, a more relevant legal constitution for capitalism designs and structures the rule of law, definitions of democracy based on affirmatively protecting individual liberty, and details enforceable measures for internal conflict resolution for the remaining 27 EU post-BREXIT in 2020. Even if the UK reverses its position, withdraws Article 50 and remains in the EU, these institutional challenges arising from the “politics of resentment” will still need to be addressed.

liberty; and [2] how to establish a new *legal constitution for capitalism* designed and dedicated in this century to create a global compact based first and foremost on the rule of law and not some outdated 1980 economic forecast model and its subsequent ideology.

To begin to shift this imbalance and secure the core function of the State, new perspectives need to be debated at the EU Council, Commission and Parliament during this transition period so that targeted research can be initiated and sustained to support risk taking by States along the *domestic axis* and the *international axis* – that risk taking and modeling of projects in democracy will be needed operationally to balance the State’s core function over the next decade. Such research would best be designed to correct the unfettered movement of capital between borders and around the world, and include adjustments that correct the impact of current distortions in the global marketplace – all foundational rules to redefine the parasitic historical relationship between democracy and private capital, and for the creation of a new *legal constitution for capitalism*. Hopefully this agenda will be in line with the work of The Conference on the Future of Europe 2020–2024 so it can move beyond the *constitutional capture* of a bureaucracy in Brussels as noted by Kocewicz, Hamulák, Rodrik, Piketty and others who are about democracy. There are several immediate interventions proposed here.

In order to better track information about global inequality, Piketty and his collaborators maintain The World Wealth and Income Database [WID] to begin to look at the evolution of wealth and income.⁵⁴ A Global Wealth Register [GWR] as proposed by Zucman in the *Hidden Wealth of Nations* could also be initiated and launched regionally by the 27EU as early as 2021. This register would track and coordinate information gathering together regionally about owners of wealth in parts of the world where capital is primarily foreign owned and could be an answer to the problems about capitalism that Mason, Varoufakis and others have articulated.⁵⁵ Tracking income and economic capital flow return to the top

⁵⁴ ACEMOGLU, D. and ROBINSON, J. *Why Nations Fail: The Origins of Power, Prosperity and Poverty*. New York: Crown, 2012; See also *World Wealth and Income Data Base*; Available at: www.wid.world

⁵⁵ MASON, P. *The End of Capitalism Has Begun*. London: Allen Lane Pubs, 2015. [notes that Post-capitalism is possible because of three major changes information technology has brought about in the past 25 years. First, it has reduced the need for work, blurred the edges between work and free time and loosened the relationship between work and wages. The coming wave of automation, currently stalled because our social infrastructure cannot bear the consequences, will hugely diminish the amount of work needed – not just to subsist but to provide a decent life for all. Second, information is corroding the market’s ability to form prices correctly. That is because markets are based on scarcity while information is abundant. The system’s defense mechanism is to form monopolies – the giant tech companies – on a scale not seen in the past 200 years, yet

echelon of a country who may not always support democratic values [oligarchs and military leaders] but who are part of the global elite is a potential asset that the Global Wealth Tax outlined by Piketty could muster in an effort to also begin to re-write the rule of law and concretely identify areas where the new *legal constitution for capitalism* can be initiated.⁵⁶

As the *politics of resentment* continues to impact the public square of democracy, a definition for 21st century democracy and the value of solidarity as it correctly interfaces the rule of law will be needed. The scope of 21st century sovereignty and its legitimate expression as outlined in the GeoNOMOS reflects the challenges where the European Union redefines and reintegrates the core values of participatory democracy and individual liberty, not based on ideals defined from centuries gone by, but reinvigorated by the demands of the 21st century. The legal empowerment of this new State level scaffolding is essential.

Creating a new *legal constitution for capitalism* sustains the enterprise of law as part of the GeoNOMOS. The enterprise of law restructures the affirmative role and duties of public governance over unfettered private sector commercial activity as Piketty suggests so capitalism becomes more of a transformative or *dynamic legal system*. This dynamic legal system has huge implications for supporting democratic social contracts and social investments in civil society which in turn, simultaneously protects individual liberty and human rights.

In the neoliberal paradigm [c.1980–2010] of capitalist globalization, the enterprise of law was always chasing after and reacting to how the “trickle-down”

they cannot last. Third, we’re seeing the spontaneous rise of collaborative production: goods, services and organizations are appearing that no longer respond to the dictates of the market and the managerial hierarchy]; see also VAROUFKIS, Y. Capitalism, Democracy and Europe [November 5, 2019]; Available at: <https://braveneweuropa.com/yanis-varoufakis-capitalism-dee-mocracy-and-europe>. [Former finance minister for Greece; Challenges the term “neoliberal” that has been used to financialize capital post 1970s including the Cold War geopolitical relations. From the 1870s to the 1920s, democracy gradually became disempowered as the corporate world – a democracy-free zone – emerged. Since the end of the Bretton Woods system in the 1970s, power has migrated to finance. Goldman Sachs suddenly became more important than Ford, General Motors, or General Electric. Even corporations like Apple and Google are increasingly becoming financialized. Apple, for example, is sitting on hundreds of billions of dollars, and it is operating more like a financier than an iPhone producer... So, if you think of capitalism as a voting mechanism, it is anti-democratic in the sense that money determines power. The evolution of capitalism over the last few centuries is a history of the constant transfer of power to the wealthy, including the power to make decisions that affect the distribution of income... We have the tools necessary in order to spend at least five percent of the global GDP on a Great Transition that saves the planet. Technically, we know how to create a new Bretton Woods, a progressive Green New Deal that diverts resources to saving the planet and creating quality green jobs across the globe].

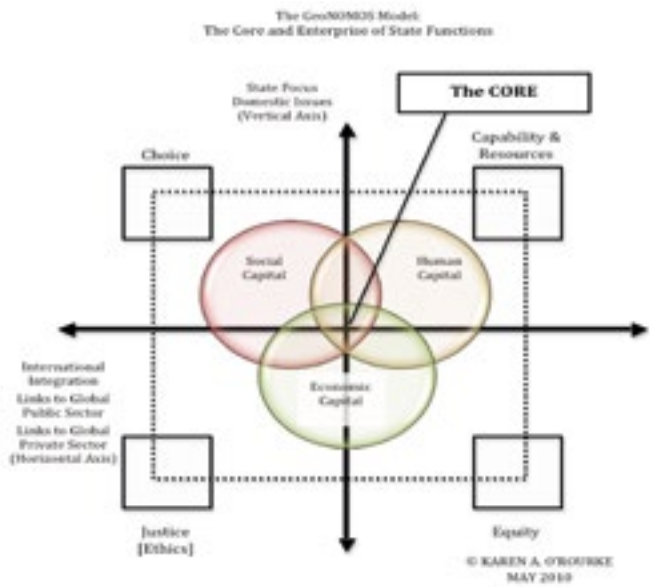
⁵⁶ ZUCMAN, G. *The Hidden Wealth of Nations: The Scourge of the Tax Havens* [trans. Teresa Fagan]. Chicago: University of Chicago Press, 2014.

economics of the neoliberal ideology operated in the marketplace. This reactionary model for the rule of law not only diminished, but also actually destroyed the public accountability function and public sector regulatory role of the sovereign State. Establishing a working *legal constitution for capitalism* that is more proactive and offers a broader platform in the sense of predictability can support a rule of law that protects the core function of every State [balancing all of its capital resources] as delineated in the GeoNOMOS.

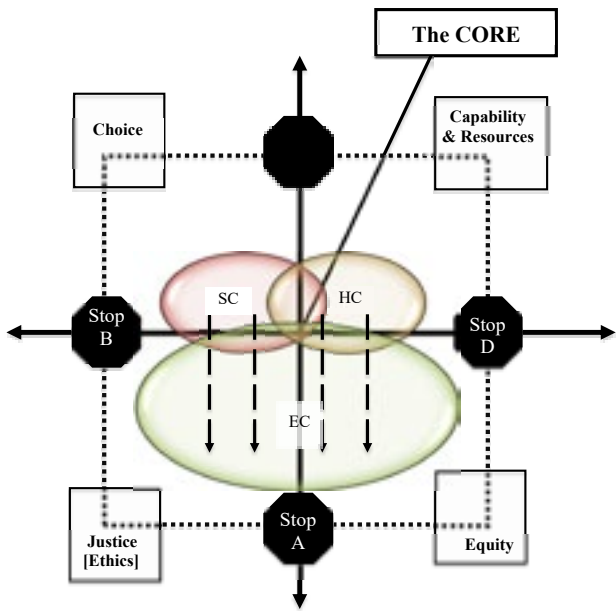
Other non-state actors and international corporate entities that engage within the State must also abide within the GeoNOMOS Framework of Liberty, its four cornerstones, and enterprise of law. In this way, the four cornerstones of the Framework of Liberty [justice, equity, individual choice, and individual capability/resource development] are consistently incorporated within the geographic operation of each of EU State Members. This in turn, ultimately supports broader EU regional democratic principles and defined values of solidarity such as reciprocity, mutuality and human dignity for this century.

States can no longer cling to the 18th century “invisible hand” theory or the moral sentiments espoused by Adam Smith. Nor can dominant States memorialize or revert back to a 19th century market theory based on an older constitution for capitalism that codified and modeled colonialism. The 20th century economic models that supported the “welfare State” are now merely reflective reference points for this century. Just as the “international community of States” no longer rely on an outdated 17th century Westphalian notion of sovereignty, there are demands in the current 2020–2022 marketplace context to redefine solidarity, mutuality and reciprocity.⁵⁷ Addressing this transition at the crossroads of the rule of law and globalization may be the greatest opportunity that the European Union has this century to intentionally redefine democracy based on the underlying values of protecting individual liberty and then, using those new principles of democracy, to design a new *legal constitution for capitalism*. Only then, can a new market paradigm create a global compact that [a] engages a web of economic traders in a ‘transformational system’ that focuses on sustainability, mutuality and reciprocity; and [b] where capitalist globalization becomes an instrument for achieving goals that a democratic civil society seeks in this century – prosperity, stability, freedom and quality of life.

⁵⁷ Some States want to design monetary and tax policy in support of full employment of those residing in their State. Other States design domestic programs to advantage only the moneyed elite condoning corruption in government and community as a routine practice. Somewhere in between there is balance that promotes participatory democracy based on individual liberty. It has yet to be defined and operationalized. In the GeoNOMOS it is the cornerstones of the framework of liberty and the enterprise of law operating inside that framework that offers some insight into the ongoing public debate on new forms and legitimate expressions for State sovereignty.



The GeoNOMOS Model:
The Shifting of Economic Capital – Extreme Condition A / The Loss of State Core



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