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TIMING BREXIT RIGHT: THERESA MAY'S GREAT POLITICAL CHALLENGE

❖ NOTE ❖

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Abstract

The Prime Minister of the United Kingdom, Theresa May, in her expressed pursuit for a hard Brexit, faces economic, legal, and political challenges in her endeavors to gain a hard Brexit deal. Each of these challenges individually presents much difficulty, but together, these challenges appear daunting. Nonetheless, these are challenges that can ultimately be overcome, and this Note proposes a way to overcome these challenges, and deliver a final deal to Queen Elizabeth II for royal assent.

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I. INTRODUCTION

Recently, the Prime Minister of the United Kingdom, Theresa May, delivered a speech at Lancaster House in London outlining her broad

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objectives she sought in Britain's departure from the European Union (E.U.), or "Brexit".¹ Her description of the nature of Britain's departure was of particular importance:

[W]e seek a new and equal partnership – between an independent, self-governing, Global Britain and our friends and allies in the EU. Not partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out. We do not seek to hold on to bits of membership as we leave. No, the United Kingdom is leaving the European Union. And my job is to get the right deal for Britain as we do.²

This would mean a departure not only from the European Union and its mechanisms of power, but the single market as well: a complete severance of political ties to the E.U..³

The Supreme Court of the United Kingdom recently dismissed an appeal made by the Secretary of State for Exiting the European Union.⁴ This

¹ Theresa May, U.K. Prime Minister, The government's negotiating objectives for exiting the EU: PM speech at Lancaster House, London (Jan. 17, 2017), in PRIME MINISTER'S OFF. (U.K.), Jan. 17, 2017, <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>; see also Peter Wilding, *Stumbling towards the Brexit: Britain, a Referendum and an Ever-Closer Reckoning*, BLOGACTIV.EU (May 15, 2012), <https://blogactiv.eu/blog/2012/05/15/stumbling-towards-the-brexit/>, for an early description of a British departure from the E.U., with the moniker, "Brexit". Though this author does not endorse the political conclusions of a Brexit, the article, nonetheless, does give a useful summation of a departure of the U.K. from the E.U. in the familiar, singularly-worded term ("Brexit") commonly known today.

² *Id.*

³ Gavin Barrett, *How Article 127 of the EEA Agreement Could Keep the UK in the Single Market*, LONDON SCH. ECON. EUR. POL. AND POL'Y BLOG (U.K.) (Jan. 4, 2017), <http://blogs.lse.ac.uk/euoppblog/2017/01/04/how-article-127-eea-agreement-could-keep-the-uk-in-the-single-market/>; Stephen Castle & Stephen Erlanger, *British Premier Outlines Path To a Clean Break With the E.U.*, N.Y. TIMES, Jan. 18, 2017, at A9.

⁴ *R (Miller) v. Secretary of State for Exiting the European Union* [2017] UKSC 5 [7], [152] (appeal taken from EWHC (Admin)) (UK), <https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>. The court also ruled on whether the parliamentary bodies' assent from Scotland, Wales, and Northern Ireland was required. See also, *Id.* at [150], (noting that the devolved governments of Scotland, Wales, and Northern Ireland do not have the power to use their legislatures to block Article 50's invocation). A contrary result regarding the powers of the devolved parliaments would have further complicated Britain's exit from the European Union – perhaps mortally – considering the Scottish National Party's staunch opposition to Brexit, and its control of Scottish Parliament. See generally, Peter Geoghegan,

ensures that parliamentary approval is required to invoke the mechanisms for departure from the E.U. outlined in Article 50 of the Treaty of Lisbon (Lisbon Treaty).⁵ The pursuit of a hard Brexit, however, requires a departure from the European Economic Area (E.E.A.) as well.⁶ The threat of a lawsuit by British Influence, a pro-E.U. think tank, over whether an exit from the E.E.A. under Article 127 of the Agreement on the European Economic Area (E.E.A. Agreement) will also require parliamentary assent adds another issue.⁷ It also threatens to bifurcate Brexit into separate departures from both the E.U. bodies and the E.E.A..⁸

For Prime Minister May to attain the Brexit that she seeks, she will need to strike a middle ground in terms of when she completes the Brexit negotiations. Precise timing at every stage will enable the Prime Minister to use best her political power to push the final deal into the arms of Queen Elizabeth II for royal assent.⁹ Over-prolonging these negotiations jeopardizes the prospects of any deal and disables any domestic political leverage against opponents in the process. Both extrema loom large in light of the fact that the E.U. did not intend to use Article 50 provisions, particularly in light of political intransience from E.U. bureaucrats.¹⁰ A plot within the House of Lords to modify a final deal that erects a hard Brexit makes timing concerns more urgent.¹¹

Scottish Nationalist Fury at 'Arrogant' May Government, POLITICO EUR. (Oct. 5, 2016, 5:23 AM), <http://www.politico.eu/article/scottish-nationalist-fury-at-arrogant-may-government-snp-brexit-conservatives-european-union/>.

⁵ R (Miller), [2017] UKSC 5 at [152].

⁶ Barrett, *supra* note 3.

⁷ James Tapsfield, *Is Brexit EVER Going to Happen? Theresa May Faces Fresh Legal Battle over Whether MPs Must Approve Leaving Single Market As well As EU*, DAILY MAIL ONLINE (U.K.) (Nov. 29, 2016), <http://www.dailymail.co.uk/news/article-3977774/Is-Brexit-going-happen-Theresa-faces-fresh-legal-battle-MPs-approve-leaving-single-market-EU.html>.

⁸ *Id.*

⁹ Royal assent is the British equivalent of the President of the United States signing a bill into law. However, unlike the practice of the American counterpart, royal assent is, in practice, a formality in the modern day. See generally Lucinda Maer & Oonagh Gay, *The Royal Prerogative*, HOUSE OF COMMONS LIBR. 4-5 (Dec. 30, 2009), www.parliament.uk/briefing-papers/SN03861.pdf, for further details.

¹⁰ Crispian Balmer, *Father of EU Divorce Clause Demands Tough Stance on British Exit*, REUTERS (July 21, 2016, 3:19 PM), <http://www.reuters.com/article/us-britain-eu-amato-idUSKCN1012Q8>; Katrine Bussey, *Article 50 diplomat predicts 'one in three' chance of no Brexit deal*, INDEP. (U.K.) (Jan. 19, 2017), <http://www.independent.co.uk/news/uk/politics/brexit-article-50-diplomat-lord-kerr-no-deal-a7534611.html>.

¹¹ See generally Duncan Geddes, *Mandelson Urges Peers to Alter Exit Deal*, SUNDAY TIMES (U.K.) (Feb. 19, 2017), <http://www.thetimes.co.uk/edition/news/lords-must-fight->

Part II of this Note provides background and analysis into issues surrounding Brexit. Specifically, it delves into problems caused by the relevant treaty provisions, economic issues, and political realities. Part III concludes by noting that although Prime Minister May has a struggle ahead, a favorable Brexit deal is possible.

II. BACKGROUND & ANALYSIS

Section A of this part outlines the legal and timing complications brought by Article 50 of the Lisbon Treaty, and Article 127 of the E.E.A. Agreement. That section also provides a way to harmonize the two provisions. Section B illustrates the economic and time constraint conditions that the U.K. will need to address in the course of making a deal to exit the E.U. and proposes a way to leverage this into a good deal. Section C accounts for what would and could occur in the course of making a deal and offers a path through Parliament, particularly the House of Lords.

A. Article 50 & Article 127

Under the terms of Article 50 of the Lisbon Treaty, the member state's withdrawal must be in accordance with its constitutional requirements.¹² Because of the ruling from the Supreme Court, this would require parliamentary approval.¹³ The treaty also notes the overall negotiation process between parties, and requires that the European Parliament and a qualified majority of the Union of the Council approve the deal.¹⁴ A qualified majority here requires 72% of remaining voting members from at least 65% of the population.¹⁵ There are also strict time limits that accompany the negotiation process:

back-on-brexitsays-mandelson-07twv29r6?CMP=Sprkr_-3_-thesundaytimes_-News_-Unspecified_-Statement_-Unspecified_-TWITTER&linkId=34657333.

¹² The Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community, including the Protocols and Annexes, and Final Acts with Declarations, Dec. 13 2007, Bel.-Bulg.-Czech-Den.-Ger.-Est.-Ir.-Greece-Spain-Fr.-It.-Cyprus-Lat.-Lith.-Lux.-Hung.-Malta-Neth.-Austria-Pol.-Port.-Rom.-Slov.-Slovk.-Fin.-Swed.-U.K., art. 49A, GR. BRIT. T.S. No. 7 (2010) (Cm. 7901) [hereinafter Treaty of Lisbon]. Note that Article 49A in this treaty is commonly termed Article 50. See Tapsfield, *supra* note 7.

¹³ R (Miller), [2017] UKSC 5 at [152].

¹⁴ Treaty of Lisbon, *supra* note 12.

¹⁵ Alan Renwick, *What Happens if We Vote for Brexit?*, THE CONST. UNIT BLOG (U.K.) (Jan. 19, 2016), <https://constitution-unit.com/2016/01/19/what-happens-if-we-vote-for-brexite/>.

[European Union Membership] shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification... unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.¹⁶

Article 50 allows a unanimous vote by the European Council to extend the time limitation but this is unlikely because of an unwillingness by E.U. leaders to concede more than apparently necessary.¹⁷ The treaty provides the two-year constraint, through which serious trade and legal considerations in the negotiations are bound.¹⁸

Theresa May's political goal – to sever all political ties with the European Union and its affiliates – requires an exit from the E.E.A..¹⁹ The terms of withdrawal from the E.E.A. under Article 127 the Agreement on the European Economic Area, in contrast to the Article 50 provisions, are more relaxed:

Each Contracting Party may withdraw from this Agreement provided it gives at least twelve months' notice in writing to the other Contracting Parties. Immediately after the notification of the intended withdrawal, the other Contracting Parties shall convene a diplomatic conference in order to envisage the necessary modifications to bring to the Agreement.²⁰

Because these E.E.A. Agreement terms can be harmonized to the Treaty of Lisbon's withdrawal timetable, it would be helpful to trigger both withdrawal provisions simultaneously.²¹ But even when the two withdrawal processes are triggered in tandem, the pressures imposed by Article 50 time limitations give

¹⁶ Treaty of Lisbon, *supra* note 12.

¹⁷ Bussey, *supra* note 10; *What is Article 50 of the Lisbon Treaty - and Is It Irrevocable?*, WK. (U.K.) (Nov. 3, 2016), <http://www.theweek.co.uk/brexit/72965/what-is-article-50-of-the-lisbon-treaty-and-is-it-irrevocable>.

¹⁸ Treaty of Lisbon, *supra* note 12; Bussey, *supra* note 10.

¹⁹ May, *supra* note 1.

²⁰ Agreement on the European Economic Area with Final Act and Declarations, May 2 1992, E.E.C.-E.C.S.C.-Belg.-Den.-Ger.-Greece-Spain-Fr.-Ir.-It.-Lux.-Neth.-Port.-U.K.-Austria-Fin.-Ice.-Liech.-Nor.-Swed.-Switz., art. 127, GR. BRIT. T.S. No. 26 (1995) (Cm. 2847) [hereinafter E.E.A. Agreement].

²¹ Treaty of Lisbon, *supra* note 12; E.E.A. Agreement, *supra* note 20.

the E.U. a procedural advantage.²² Fortunately, the United Kingdom can use its economic position as a fulcrum to gain favorable terms in a deal.²³ But this requires an acute awareness of the time constraints imposed by the withdrawal provisions of the Lisbon Treaty and the E.E.A. Agreement.²⁴

B. Dealing with the European Union

Economic problems from excessive inflation are noted to arise from physical money leaving a nation through trade deficits.²⁵ The U.K. had a total trade deficit of £13.2 billion as of November 2016, and has had an overall trade deficit every month since June 2015.²⁶ £8.7 billion of this trade deficit came from the E.U..²⁷ Within the E.U. in that same time, the U.K.'s trade deficit was £2.85 billion with Germany, £1.33 billion with the Netherlands, and £443 million with France.²⁸ Economic numbers suggest that a reduction of exports from 2013 on and a growing trade deficit with the E.U. are key contributors.²⁹ Further, Britain's shrinking market with the E.U., and a growing market outside the E.U. make the trade deficit with the E.U. a more pressing concern.³⁰ Thus, the overall health of the British economy within the E.U. leaves little to be envied.

²² Renwick, *supra* note 15.

²³ *Id.*

²⁴ Treaty of Lisbon, *supra* note 12; E.E.A. Agreement, *supra* note 20.

²⁵ See Kurt Williamsen, *So I'm Told Trade Deficits Are Good*, NEW AM. (Mar. 15, 2015), <https://www.thenewamerican.com/economy/economics/item/20341-so-i-m-told-trade-deficits-are-good> (arguing in brief that there is a link to trade deficits and inflation, and that there is an influence by trade deficits, upon inflation, though not the only factor, and not without the possibility of inflation inducing trade deficits); *but c.f.* Capital Flows, *Two Cheers For A Big U.S. Trade Deficit*, FORBES (Sep. 18, 2011, 6:33 PM), <http://www.forbes.com/sites/realspin/2011/09/18/two-cheers-for-a-big-u-s-trade-deficit/#613917131aab> (arguing that trade deficits are beneficial to the economy because of cheaper goods, which leads, according to this line of thought, to more jobs, and a healthier, more robust economy).

²⁶ H.M. REVENUE & CUSTOMS (U.K.), UK OVERSEAS TRADE STAT. NOV. 2016 1 (2017) [hereinafter U.K. Trade Statistics], https://www.uktradeinfo.com/Statistics/OTS%20Releases/OTS_Release_1116.pdf.

²⁷ *Id.* at 3.

²⁸ *Id.* at 4, 8.

²⁹ *Id.* at 2–3.

³⁰ James Burton, *EU Exports Are a Mere 12% of British Economy: Trade Figures Show Focus on Europe Has Steadily Dropped in Past Five Years*, DAILY MAIL (U.K.) (July 29, 2016, 8:57 P.M.), <http://www.dailymail.co.uk/news/article-3715547/EU-exports-mere-12-British-economy-Trade-figures-focus-Europe-steadily-dropped-past-five-years.html>.

Brexit presents itself as an antidote to these chronic economic woes. The U.K. imported £42.5 billion worth of goods for the month of November.³¹ Of these, £5.2 billion were spent on mechanical appliances, and £4.81 billion on motor vehicles.³² These are goods that play a key role in Germany's prosperous economy.³³ The U.K.'s vote to leave the E.U. has caused a decline in German exports, and capital investment, as well as a downgrade in Germany's economic prospects.³⁴

Britain's economic opportunity in Brexit poses as an economic specter for the German Chancellor, Angela Merkel. Merkel's economic success provides her with substantial political gravitas.³⁵ Merkel's successes at home produced her power abroad, and particularly in the E.U..³⁶ However, Merkel's poor handling of the migrant crisis in Europe has caused a weakening of her political clout at home.³⁷ It has also caused a loss of influence among E.U. nations on the migrant crisis issue.³⁸ Merkel has a direct interest in handling Britain's exit from the E.U. in a way that minimizes the negative impact on Germany, if only to cling to power.³⁹ This will require that Merkel reach a bilateral agreement with the U.K. that preserves the corpus of German trade

³¹ U.K. Trade Statistics, *supra* note 26, at 10.

³² *Id.*

³³ Nina Adam, *Brexit Vote Brings Germany-U.K. Trade Relationship Into Question*, WALL ST. J. (June 28, 2016, 1:38 P.M.), <http://www.wsj.com/articles/brexit-vote-brings-germany-u-k-trade-relationship-into-question-1467134712>; George Packer, *The Quiet German*, NEW YORKER (Dec. 1, 2014), <http://www.newyorker.com/magazine/2014/12/01/quiet-german>.

³⁴ See generally Adam, *supra* note 33; *German exports fall in July after global demand weakens*, B.B.C. NEWS (U.K.) (Sept. 9, 2016), <http://www.bbc.com/news/business-37316827>; Guy Chazan, *UK's Brexit Vote to Dampen German Economic Growth – Think Tank*, FIN. TIMES (U.K.) (Sept. 8, 2016), <https://www.ft.com/content/56f0afca-100d-32f1-b816-7b885fec767a>.

³⁵ Packer, *supra* note 33.

³⁶ See generally *id.*; Alison Smale & Steven Erlanger, *Election of Trump Leaves Merkel as the Liberal West's Last Defender*, N.Y. TIMES, Nov. 13, 2016, at A8; Adrian Bridge, *A Conversation with Angela Merkel: Remembering Her Rise to Power*, TELEGRAPH (U.K.) (Sept. 20, 2013, 11:40 AM), <http://www.telegraph.co.uk/news/worldnews/europe/germany/10322798/A-conversation-with-Angela-Merkel-remembering-her-rise-to-power.html>; Faisal Islam, *Baton of Global Leadership Passes from US to Germany*, SKY NEWS (U.K.) (Nov. 18, 2016, 8:06 AM), <http://news.sky.com/story/has-baton-of-global-leadership-passed-from-us-to-germany-10661050>.

³⁷ Staff, *Is the Merkel Era Coming to an End?*, SPIEGEL ONLINE (Ger.) (Sept. 9, 2016, 6:10 PM), <http://www.spiegel.de/international/germany/refugee-policy-sees-waning-of-power-for-merkel-a-1111668.html>.

³⁸ *Id.*

³⁹ *Id.*

with the U.K., and use her significant European influence to reach a multinational agreement.⁴⁰ Prime Minister May can this path to leverage the best possible deal with the E.U..

C. Gaining Parliamentary Assent

In order for Britain to leave the E.U., Parliament must approve the exit deal reached by Theresa May. The House of Commons is unlikely to pose any threat to parliamentary assent, since that would be contrary to what the British public as a whole want.⁴¹ But the 203 Labour members of the House of Lords (also called peers) and 102 Liberal Democrat peers imply innate resistance, considering that 403 peers is a majority.⁴² All a unified Labour-Liberal Democrat coalition would need is 98 votes.⁴³ This combined with a plot to organize resistance to a hard Brexit deal makes resistance more likely in the upper chamber.⁴⁴ This is why Theresa May's timing as to when she concludes exit negotiations will become important; it will determine how effective her range of powers will be.

The relevant statutes only permit the House of Lords to delay non-monetary bills passed by the House of Commons for no more than one year.⁴⁵ Beyond this point, such a bill bypasses the House of Lords, and is given to the monarch for royal assent consideration.⁴⁶ If the Prime Minister strikes a deal with the E.U., and its affiliated parties, no more than one year after Article 50 is invoked, then the House of Lords is no issue. The

⁴⁰ U.K. Trade Statistics, *supra* note 26, at 10; Adam, *supra* note 33; Packer, *supra* note 33.

⁴¹ Katrin Bennhold, 'Brexit' Ruling Exposes Cracks in an Old System, N.Y. TIMES, Jan. 25, 2017, at A4, A6.

⁴² *Lords by Party, Type of Peerage and Gender*, U.K. PARLIAMENT, <http://www.parliament.uk/mps-lords-and-offices/lords/composition-of-the-lords/> (last visited Feb. 24, 2017) (noting that 203 members of the House of Lords are Labour, 102, Liberal Democrat, compared with 253 Conservative, 178 Crossbencher, and 29 Non-affiliated, 26 Bishops, and 14 Other, which makes 805 members, and 403 needed for a majority); Rob Merrick, *Brexit: Lib Dems to Fight on for EU Single Market Membership after Labour Accused of Dropping the Issue*, INDEP. (U.K.) (Jan. 25, 2017), <http://www.independent.co.uk/news/uk/politics/brexit-latest-news-eu-single-market-membership-liberal-democrats-tim-farron-labour-tariff-free-a7544791.html>.

⁴³ *Id.*

⁴⁴ *Id.*; Geddes, *supra* note 11.

⁴⁵ Parliament Act, 1911, 1 & 2 Geo. 5 c. 13, § 2 (U.K.), http://www.legislation.gov.uk/ukpga/1911/13/pdfs/ukpga_19110013_en.pdf; Parliament Act, 1949, 12, 13 & 14 Geo. 6 c. 103, § 1 (U.K.), http://www.legislation.gov.uk/ukpga/1949/103/pdfs/ukpga_19490103_en.pdf.

⁴⁶ *Id.*

Commons could just pass the deal each time the upper house rejects it, and the on the third time the Commons passes the deal, it would go straight to Her Majesty, Elizabeth II.⁴⁷ This would make the House of Lords practically irrelevant in Brexit.

But if a deal were struck after that one-year duration, the House of Lords would have the ability to delay the bill to beyond the two-year provision set out in Article 50.⁴⁸ This would effectively allow the House of Lords to stop any deal from reaching the Queen. If this is Theresa May's reality, the Prime Minister will need to use her political and governmental leverage over the House of Lords, to facilitate the deal's passage. This is best used if she leaves ample time for proper leverage usage. If the deal is struck too close to the two-year mark, Theresa May's ability to gather the necessary votes in the upper chamber will become very difficult if not impossible.

Politically, it is entirely possible in theory for Theresa May to push a deal through with only Conservative, and Crossbencher peers to form a majority in the upper chamber.⁴⁹ But if Prime Minister May is unable to cobble together enough Crossbencher support, Theresa May must gain Labour support; the Liberal Democrats will likely oppose a deal.⁵⁰

Labour Party weakness nationally provides a path for Theresa May to pressure Labour peers into supporting a final deal.⁵¹ The organization of the Labour Party in the House of Commons plunged itself into disarray in the months immediately following the referendum, from which it has not recovered.⁵² This has caused the Labour Party to loose support in the

⁴⁷ *Id.*

⁴⁸ *Id.*; Treaty of Lisbon, *supra* note 12.

⁴⁹ *Lords by Party, Type of Peerage and Gender*, *supra* note 42 (combining all the Conservatives and Crossbenchers would bring the support of the deal without anyone else to 431, which is beyond the 403 votes needed, assuming all of the peer members are present).

⁵⁰ *Id.*; Merrick, *supra* note 42.

⁵¹ Laura Hughes & Kate McCann, *Jeremy Corbyn Backs Down on Vow to Force Labour MPs to Vote in Favour of Brexit*, TELEGRAPH (U.K.) (Jan. 19, 2017, 10:22 PM), <http://www.telegraph.co.uk/news/2017/01/19/labourmps-will-forced-vote-favour-triggering-article-50-says/>.

⁵² See Hughes & McCann, *supra* note 51 (Jeremy Corbyn changed his public stance on whether he would require the Members of Parliament to vote for the Article 50 invocation, and Labour Party members close to the situation said that they did not know what the party position on the Brexit vote was, implying that the Labour Party had not fully recovered from the leadership chaos a few months ago); Heather Stewart & Rowena Mason, *Labour Leadership: Jeremy Corbyn Wins Convincing Victory over Owen Smith*, GUARDIAN (U.K.) (Sept. 24, 2016, 1:14 PM), <https://www.theguardian.com/politics/2016/sep/24/labour-leadership-jeremy-corbyn-wins-landslide-victory-party> (Jeremy Corbyn continues his leadership of the Labour Party with his

national polls.⁵³ From this, Theresa May can argue effectively that the Labour Party has no mandate to block the policy.⁵⁴ But Theresa May must

win against Owen Smith, and with a greater percentage of the voting body of the Labour Party than his first victory in 2015); Andrew Grice, *Labour Leadership Election: Angela Eagle Pulls out of Contest to Allow Owen Smith Straight Run at Jeremy Corbyn*, INDEP. (U.K.) (July 19, 2016), <http://www.independent.co.uk/news/uk/politics/angela-eagle-pulls-out-labour-leadership-election-owen-smith-jeremy-corbyn-a7145021.html> (Angela Eagle, the former Shadow Business Secretary withdrew from the leadership race, and endorsed Owen Smith, after he received more support from Members of Parliament and Members of European Parliament than Eagle); *Labour Leadership: Owen Smith to Enter Contest*, B.B.C. NEWS (U.K.) (July 13, 2016), <http://www.bbc.com/news/uk-politics-36780715> (Owen Smith, the former Shadow Work & Pensions Secretary entered the leadership race against Corbyn, and another previous entrant, Angela Eagle); *Labour MPs Pass No-Confidence Motion in Jeremy Corbyn*, B.B.C. NEWS (U.K.) (June 28, 2016), <http://www.bbc.com/news/uk-politics-36647458> (vote of no confidence against Corbyn passes 172-40, in which Corbyn said was against the Labour Party constitution, repeated his call for an opponent to challenge him, and announced that he was working to replace the shadow cabinet ministers that resigned); Gordon Rayner, *Labour Meltdown (Continued): 47 Resignations, but Jeremy Corbyn Fights on*, TELEGRAPH (U.K.) (June 27, 2016, 9:34 PM), <http://www.telegraph.co.uk/news/2016/06/27/labour-meltdown-continued-44-resignations-but-jeremy-corbyn-figh/> (nearly four dozen members of the Shadow Cabinet resigned, and the Labour Members of Parliament called a vote of no confidence against Corbyn's leadership, but Corbyn refused to resign despite this, and challenged opponents of his leadership to stand against him in the next leadership election); Daniel Boffey et al., *Labour in Crisis: Shadow Ministers Resign in Protests against Corbyn*, GUARDIAN: OBSERVER (U.K.) (June 26, 2016, 6:14 AM), <https://www.theguardian.com/politics/2016/jun/26/hilary-benn-revolt-jeremy-corbyn> (Jeremy Corbyn, the Labour Party Leader sacked his Shadow Foreign Secretary, Hilary Benn after Benn made a coup attempt against Corbyn, which triggered a mass resignation of Labour Shadow Cabinet Members).

⁵³ See *Voter Intention Tracker (GB) From 2015 General Election-Present*, YOUNGOV (U.K.), <https://yougov.co.uk/publicopinion/archive/?page=1&category=political-trackers> (follow "YouGov Tracker Voting Intention 2015 to Present" hyperlink under the 'Label' column) (last visited Feb. 24, 2017) [hereinafter *Voter Intention Tracker*] (showing that Labour had a three-point lead over the Conservatives on Apr. 28-29, 2016 – YouGov's last poll before the referendum – which turned to an eleven-point Conservative lead over Labour after the referendum on July 17-18, 2016, and that the Conservative's lead over Labour is seventeen points in the most recent General Election Preference poll conducted, on Jan. 17-18, 2017); Damian Gayle et al., *Labour Struggling to Build Voter Support, Poll Shows*, GUARDIAN (U.K.) (Jan. 14, 2017, 11:35 AM), https://www.theguardian.com/politics/2017/jan/14/labour-struggling-build-voter-support-poll-theresa-may-jeremy-corbyn?utm_source=dlvr.it&utm_medium=twitter (noting that an Optimum/Observer poll put Labour at an eight-point deficit against the Conservatives in a General Election, and put Corbyn's net approval rating at negative twenty-seven percent); Matt Singh, *ICM/Guardian (and something interesting within it...)*, NUMBER CRUNCHER POL. (U.K.) (Jan. 23, 2017), <https://www.ncpolitics.uk/2017/01/icmguardian-poll-something-interesting-within.html/> (showing that an I.C.M./Guardian poll conducted from Jan. 20-22, 2017 showed the

also argue that she has a sufficient electoral mandate to advance the deal.⁵⁵ Though Labour members of the House of Lords would be insulated from an electoral backlash, electoral pressures based on party loyalty give a motive to allow a deal.⁵⁶ This is a tool Theresa May can use to advance a deal in the House of Lords.

Theresa May's other option – her governmental leverage – is to appoint members to the House of Lords that would favor an exit from the E.U. before the vote on the final deal.⁵⁷ In modern practice, it is the Prime Minister that appoints the members; the monarch accedes to the Prime Minister's appointment wishes.⁵⁸ Naturally the Prime Minister would have to appoint enough new lords to push the final deal through the House of Lords.⁵⁹ Brexit's uniqueness and a looming, organized, gathering opposition within the upper house provides a justification to Theresa May to counter

Conservative lead over Labour in a hypothetical General Election was sixteen points, and that the share of persons preferring Labour dropped six points since Apr. 2016).

⁵⁴ *Id.*

⁵⁵ Sam Coates, *Most Voters Back PM's Plan...but Doubt It Will Work*, TIMES (London) (Jan. 19, 2017, 12:01 A.M.), <http://www.thetimes.co.uk/article/most-voters-back-pm-s-plan-but-doubt-it-will-work-vfwznccn9> (A YouGov/Times poll in the week leading up to Jan. 19, 2017 showed a majority of fifty-five percent liked the ideas Theresa May put forth in her speech on Jan. 17, 2017, a forty-seven percent plurality that had confidence in the Prime Minister's negotiating ability, compared with thirty-eight percent that did not, and forty-eight percent believed that no deal was better than a bad deal, compared with seventeen percent who believed the contrary (the fact that a majority believed that the E.U. would not agree to her terms is irrelevant – this paper addresses precisely how Theresa May could get an E.U. deal)); Gayle et al., *supra* note 53 (An Optimum/Observer poll conducted from Jan. 10-12, 2017, showed that a forty-one percent plurality preferred closing the U.K.'s borders with other E.U. nations over continuing in the single market, compared with thirty-two percent who preferred staying in the single market to closing the U.K.'s borders to E.U. nations); *Voter Intention Tracker*, *supra* note 53 (According to various YouGov polls, Conservative voter share increased from thirty percent on Apr. 25-26, 2016 to forty-two percent on Jan. 17-18, 2017, compared to Labour's voter share dropping from thirty-three percent to twenty-five percent over that same respective period).

⁵⁶ *How Members Are Appointed*, U.K. PARLIAMENT, <http://www.parliament.uk/business/lords/whos-in-the-house-of-lords/members-and-their-roles/how-members-are-appointed/#jump-link-1> (last visited Feb. 24, 2017).

⁵⁷ *Id.*

⁵⁸ *Id.*; see also *Cameron Announces 26 New Tory Peers in Dissolution Honours*, B.B.C. NEWS (U.K.) (Aug. 27, 2015), <http://www.bbc.com/news/uk-politics-34072201>.

⁵⁹ See *Lords by Party, Type of Peerage and Gender*, *supra* note 42 (given that 203 members of the House of Lords are Labour, 178 are Crossbencher, and 102 are Liberal Democrat, if these members form a block that opposes a final deal with the E.U., it is foreseeable that Theresa May would appoint as many as three-hundred new peers to clear such a hypothetical blockade posed by Labour, Liberal Democrat and Crossbench members).

any opposition to such an appointment.⁶⁰ And it is certainly within Theresa May's powers to create such new peers.⁶¹ Prime Minister May could also use the threat of appointing more lords as an extra political weapon to ensure final passage of a deal with the E.U. among the existing peers in the House of Lords. However, both the threat of, and actual appointment of more lords will require ample time for vetting. Therefore, these critical time constraints require that enough time between the final deal with the E.U. and the two-year provision in Article 50 is provided.⁶²

III. CONCLUSION

Thus, in order for Theresa May to obtain the exit deal she seeks, she will need to time each stage of the Brexit process precisely. She must not allow negotiations with the E.U. and its affiliates to prolong so far that no deal is made, or that a deal is made so close to the Article 50 timing provisions that no deal can go through Parliament.⁶³ Theresa May also must take care that Parliament – and the House of Lords particularly – does not obstruct the deal to the point where it is effectively killed before being ratified, provided the need presents itself. Thus, although Prime Minister May must tread difficult terrain to reach her goal of a hard Brexit, she has the ability to do just this, and should use these means at her disposal to make such a deal a reality.

⁶⁰ Geddes, *supra* note 11; see also *Cameron Announces 26 New Tory Peers in Dissolution Honours*, *supra* note 58, (David Cameron, the former Prime Minister of the U.K., faced political criticism in his appointment of only twenty-six new members of the House of Lords).

⁶¹ *How Members Are Appointed*, *supra* note 56; *Cameron Announces 26 New Tory Peers in Dissolution Honours*, *supra* note 58.

⁶² Treaty of Lisbon, *supra* note 12.

⁶³ *Id.*