

Accountability, Populism and Expertise: The United Kingdom Government's Response to Covid-19¹

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ABSTRACT

This article questions the perceived or assumed dichotomy between populism and expertise. Using the United Kingdom Government's response to the Covid-19 crisis in 2020 as a case study, it argues that there is in fact an *alignment* or *synergy* between populism and expertise, one that has important implications for public law, particularly for the principle of accountability. More specifically, it argues that technocratic means – and reliance on scientific expertise in particular – can indeed be useful to populists to the extent that they can be *utilised* as a way to depoliticise issues and at least partially shield them from direct political accountability. This, in turn, allows populists to escape responsibility for their policy choices in a way that, perhaps ironically, resembles the populist critique of the “undemocratic” nature or “technocratic” tendencies of present-day liberal democracy.

Key words: Accountability; Populism; Expertise; Science; Covid-19; Executive; Government

INTRODUCTION

Scholars of populism have long stressed the apparent tension or dichotomy between populism and expertise.² Many prominent legal scholars have also made claims of a similar nature. For instance, Alison L. Young has recently pointed out that populism challenges the basis of expertise, whilst Nicola Lacey has identified “distrust of experts” as one of the

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² For recent examples, see, e.g. Eric Merkley, “Anti-Intellectualism, Populism, and Motivated Resistance to Expert Consensus” (2020) 84(1) P.O.Q. 24; Tamar Hostovsky Brandes and Yaniv Roznai, “Can COVID-19 Save Democracy from Populism?” (11 November 2020) IACL Roundtable, available at <https://www.iacldemocracy-2020.org/blog/2016/3/23/blog-post-sample-9wnntn-6ye75-hwawv-47gst>; Taner Edis, “A Revolt Against Expertise: Pseudoscience, Right-Wing Populism, and Post-Truth Politics” (2020) 9(13) *Disputatio* 2; Simon Tormey, *Populism: A Beginner's Guide* (London: Oneworld, 2019), p.78; and Tom Nichols, *The Death of Expertise: The Campaign Against Established Knowledge and Why It Matters* (Oxford: Oxford University Press, 2017), p.236.

hallmarks of populism.³ And many theories have been put forward to explain this distrust. Some have asserted that populism is deeply connected to anti-intellectualism, which valorises the experience-based common sense or instincts of the common people over the technocratic rule of unelected and unaccountable experts.⁴ Others have refuted this theory, at least in part, and have argued instead that populists tend to put forward an *alternative* form of knowledge, called “counterknowledge,” which challenges establishment knowledge and replaces it with a new knowledge authority, one that has a strong mobilising potential.⁵ In both cases, however, populists are said to be at least sceptical vis-à-vis mainstream experts. *Scientific* expertise, in particular, is said to be singularly antithetic to populism. By way of an example, Pippa Norris, a leading scholar of populism, has recently claimed that “populism is antiscience.”⁶

Yet, since the beginning of the Covid-19 pandemic, populist leaders from across the world have responded in very diverse and heterogeneous ways to the unprecedented health crisis, taking drastically different stances on scientific expertise and refuting the dichotomy between populism and science. If some, like President Jair Bolsonaro in Brazil and President Donald Trump in the United States, have initially downplayed Covid-19 as a “little flu” and ignored scientific advice on coronavirus,⁷ others, like Turkish President Recep Tayyip Erdoğan, have embraced scientific expertise, but in a highly selective manner.⁸ Other leaders, such as Hungarian Prime Minister Viktor Orbán, have utilised the health crisis (and scientific expertise) as a pretext to trigger sweeping executive powers and

³ Alison L. Young, “Populism and the UK Constitution” (2018) 71(1) C.L.P. 17, 35, 40, 43, 51; Nicola Lacey, “Populism and the Rule of Law” (2019) 15 A.R.L.S.S. 79, 86.

⁴ See, e.g. Merkle, “Anti-Intellectualism, Populism, and Motivated Resistance to Expert Consensus”; Rogers Brubaker, “Why Populism?” (2017) 46:5 Theory Soc. 357, 367; Richard Hofstadter, *Anti-Intellectualism in American Life* (New York, NY: Vintage 1963), p.34. See also Pierre Rosanvallon, *Le siècle du populisme : Histoire, théorie, critique* (Paris: Seuil, 2020), p.119.

⁵ Tuuka Ylä-Anttila, “Populist knowledge: ‘Post-truth’ repertoires of contesting epistemic authorities” (2018) 5(4) E.J.C.P.S. 356, 359.

⁶ See Antonis Galanopoulos, “Populism and the Pandemic” (7 July 2020) *Medium*, available at <https://medium.com/@antonisgalanopoulos/populism-and-the-pandemic-80feb363cf37> [Accessed 15 July 2020].

⁷ See, e.g. Tom Phillips, “Brazil’s Jair Bolsonaro says coronavirus is a media trick” (23 March 2020) *The Guardian*, available at <https://www.theguardian.com/world/2020/mar/23/brazils-jair-bolsonaro-says-coronavirus-crisis-is-a-media-trick> [Accessed 15 July 2020]; Philip Bump, “Trump again downplays coronavirus by comparing it to the seasonal flu. It’s not a fair comparison” (24 March 2020) *Washington Post*, available at <https://www.washingtonpost.com/politics/2020/03/24/trump-again-downplays-coronavirus-by-comparing-it-seasonal-flu-its-not-fair-comparison/> [Accessed 15 July 2020]; and Michael Crowley, Katie Thomas and Maggie Haberman, “Ignoring Expert Opinion, Trump Again Promotes Use of Hydroxychloroquine” (5 April 2020) *New York Times*, available at <https://www.nytimes.com/2020/04/05/us/politics/trump-hydroxychloroquine-coronavirus.html> [Accessed 15 September 2020].

⁸ See, e.g. Halil Gürhanli, “Turkey” in Giorgos Katsambekis and Yannis Stavrakakis (eds), *Populism and the Pandemic: A Collaborative Report* (Thessaloniki: Populismus, 2020) (POPULISMUS Interventions No. 7 [special edition], p.47.

executive aggrandisement.⁹ Arguably, the approach taken by Prime Minister Boris Johnson and his Cabinet in the United Kingdom stands in contrast to these stances on scientific expertise, as they chose to adopt a seemingly unique, *sui generis* blend of “populism” and “technocracy.”

The main aim of this article is to refute the common narrative that populists have a single, unitary relationship vis-à-vis expertise – namely, one of distrust. Using the United Kingdom as a case study, my main argument is that populism has a much more ambiguous relationship towards expertise, particularly scientific expertise, than what is commonly assumed. With reference to the ongoing Covid-19 health crisis in the country, I argue that the UK Government has adopted an opportunistic or highly selective approach to scientific expertise, one that has important implications for public law and the principle of accountability in particular. Whilst Prime Minister Johnson and others members of his Cabinet sometimes ignored expert advice, notably to maintain the image of politicians close to the people, they also simultaneously and frequently invoke scientific expertise, in an attempt to remove certain elements of health policy from the political realm and narrow the space for political debate. By doing so, I argue, they revealed the alignment or synergy – rather than dichotomy, as is often assumed – between populism and scientific expertise, one that can potentially undermine political accountability.

The article proceeds as follows. In the first part, I discuss the idea of accountability and its relationship to scientific expertise. In the second part, I present a succinct elaboration of my understanding of the concept of populism for the purposes of this analysis. I also explain how Prime Minister Johnson, members of his Cabinet and other members of the Conservative party frequently turn to rhetoric and actions that may plausibly be characterised as populist. In the third part, I show how the UK Government’s response to Covid-19 has involved a special blend of populist and technocratic elements, including a strong reliance on scientific expertise. Finally, I explore an hypothesis that would potentially explain the combination of populism and technocracy in the response to the health crisis in the country, namely that technocratic means and reliance on scientific expertise may be of a certain use by populists to the extent that they can be *utilised* as a shield from political accountability.

⁹ See, e.g. Gábor Halmai and Kim Lane Scheppele, “Don’t Be Fooled by Autocrats! Why Hungary’s Emergency Violates Rule of Law” (22 April 2020) *Verfassungsblog*, available at <https://verfassungsblog.de/dont-be-fooled-by-autocrats/> [Accessed 16 July 2020]; Gábor Halmai, Gábor Mészáros and Kim Lane Scheppele, “From Emergency to Disaster: How Hungary’s Second Pandemic Emergency will Further Destroy the Rule of Law” (30 May 2020) *Verfassungsblog*, available at <https://verfassungsblog.de/from-emergency-to-disaster/> [Accessed 16 July 2020].

ACCOUNTABILITY (AS IT OUGHT TO BE) AND SCIENTIFIC EXPERTISE

The essence of accountability, as the word implies, is the obligation to be called to account, to explain and justify a certain conduct.¹⁰ The historical roots of the concept are closely related to accounting or bookkeeping.¹¹ In the context of representative democracy, the aim is to hold political power to account through various mechanisms. It involves, at its core, a complex relationship between elected representatives, experts (of various sorts, including scientific experts) and members of the public. As one author notes, accountability in a democratic context is essentially

“a method of keeping the public informed and the powerful in check. It implies a world which is at once complex, where experts are needed to perform specialised tasks, but still fundamentally democratic in aspiration, in which members of the public assert their right to question the experts and exercise ultimate control over them.”¹²

Accountability is, moreover, one of the five prerequisites for good government, according to a 2019 UK parliamentary select committee.¹³

Of course, there are many ways in which the executive can be scrutinised and held to account. In the UK, three main mechanisms can be used to achieve this, namely political accountability, legal accountability and administrative accountability.¹⁴ For the purposes of this discussion, I focus mainly on the first type, that is to say *political* accountability. The latter has long been described as a cornerstone of representative democracy, one that, as one scholar puts it, “represents the umbilical cord that connects citizens to their representatives.”¹⁵ As discussed in a different context, political accountability “relies on individual interests and the public good being safeguarded by robust debate within the

¹⁰ Richard Mulgan, *Holding Power to Account: Accountability in Modern Democracies* (London: Palgrave, 2003), p.1; Mark Bovens, “Analysing and Assessing Accountability: A Conceptual Framework” (2007) 13 E.L.J. 447, p.450.

¹¹ Bovens, “Analysing and Assessing Accountability: A Conceptual Framework”, 448-449.

¹² Mulgan, *Holding Power to Account: Accountability in Modern Democracies*, p.1.

¹³ House of Commons Public Administration Select Committee, *Good Government* (House of Commons 97, 2018-2019), as cited in Mark Elliott and Robert Thomas, *Public Law*, 4th edn (Oxford: Oxford University Press, 2020), p.405.

¹⁴ Elliott and Thomas, *Public Law*, p.406. These are some of the main types of accountability based on the nature of the forum. There are, however, other types of accountability, for instance based on the nature of the actor (e.g. collective or individual accountability) or on the nature of the conduct (e.g. financial or procedural accountability). For a summary of these different types of accountability, see Bovens, “Analysing and Assessing Accountability: A Conceptual Framework”, 461.

¹⁵ Antonino Palumbo, “Political Accountability Reconsidered: Debates, Institutions, Rationale” in Richard Bellamy and Antonino Palumbo (eds), *Political Accountability* (Abingdon: Routledge, 2016), p.xi.

political process.”¹⁶ The idea, at its core, is to “ensure that government is subject to democratic and popular control,” notably through elections and Parliament scrutiny.¹⁷ That being said, political accountability is not necessarily, in and of itself, an infallible mechanism for holding the executive to account. As Lord Mustill noted in *Fire Brigades Union*, it “has on occasion been perceived as falling short, and sometimes well short, of what was needed to bring the performance of the executive into line with the law.”¹⁸ That is why it has often been supplemented with another form of accountability, such as *legal* accountability.¹⁹ Nevertheless, despite its inherent limits, it remains of a fundamental importance for the UK constitutional order and representative democracy in general.

Scientific expertise, for its part, is also of a primary importance. Reference to, and indeed reliance on, scientific expertise is of course necessary in many contexts. Elected representatives and other politicians do not always have the knowledge to make informed policy decisions on issues of a highly technical or scientific nature, such as health policy. It is in this context that they can, and indeed should, consult third parties such as scientific experts to make informed policy decisions. However, the inherently scientific or technical nature of these issues does not affect their political nature or character. Far from being removed from the political realm, these scientific or technical issues should be – and remain – open to contestation. As scientists rarely speak with one voice and as expertise is rarely unanimous, the political terrain should be open for debates of a scientific or technical nature; expert advice should be open to contestation, to adverse or dissenting views. Moreover, the fact that a given policy decision is backed by a number of scientific experts should not necessarily mean that it is consequently removed from the realm of politics. In other words, policymakers should use third parties, including scientific experts, to inform themselves and to make better policy decisions for which they, alone, remain accountable.²⁰

That said, reliance on scientific experts can sometimes raise questions regarding their accountability. In a widely cited article published in 1999, Peter Weingart argues that two paradoxes have emerged from the relatively new, large-scale establishment of scientific

¹⁶ Paul Daly, “*Miller*: Legal and Political Fault Lines” (2017) P.L. (special issue) 73, 87. On the political accountability of ministers (contrasted with that of judges, for example), see also R. (*on the application of Lord Carlile of Berriew QC*) v *Secretary of State for the Home Department* [2014] UKSC 69; [2015] A.C. 945 at [32].

¹⁷ Elliott and Thomas, *Public Law*, p.406.

¹⁸ Lord Mustill (in the minority) in *Fire Brigades Union* [1995] 2 A.C. 513 at [567].

¹⁹ See, e.g. the majority in R. (*Miller*) v *Secretary of State for Exiting the European Union* [2017] UKSC 5; 2 W.L.R. 583. For some nuance on this view, however, see Daly, “*Miller*: Legal and Political Fault Lines”, 89-92.

²⁰ See, e.g., David Vines, “The Role of Experts in Parliamentary Democracy” in D.J. Galligan (ed), *Constitution in Crisis: The New Putney Debates* (London: I.B. Tauris, 2017), p.113.

advice to governments.²¹ The first is that original concerns about the accountability of experts have, over time, vanished almost completely. This could be due, in part, to the “democratisation” of expert knowledge, which has become more accessible, including to political parties and actors, who are aware of the legitimating function of authoritative, scientific knowledge in politics. This had led, in turn, to the simultaneous “scientification” of politics and the politicisation of science. The second paradox that emerges from the above is that the general accessibility of scientific knowledge “has led to a competition for expertise which intensifies controversies in policy-making rather than alleviating them.”²²

Weingart’s first paradox is of particular interest in the context of this article. The main problem with the simultaneous “scientification” of politics and the politicisation of science is that it risks “closing off” politics and eroding representative democracy. There is always a risk that politics might be replaced, in a sense, by a sort of “scientifically rationalised administration” – one which, as Jürgen Habermas noted, wrongly assumes the “quasi-natural, one-dimensional direction of scientific and technical development.”²³ Yet, as will be discussed in more detail below, science is not immutable and the scientific community is far from an homogeneous group; it contains different views and sometimes different interests. Parliament and the public should not, therefore, be left as mere passive witnesses of behind-the-door talks between the executive and their (often) carefully-selected scientific advisers.

In short, political accountability is, as discussed, essential to representative democracy. Scientific expertise, for its part, is also crucial, as it provides an authoritative basis for policymakers upon which they can make – and justify – their policy decisions. In other words, policymakers remain reliant on scientific advice to make better, well-informed policy choices. As we have seen, however, reliance on scientific expertise raises important questions about the political accountability of experts and, perhaps more importantly, of the elected representatives who rely on and extensively invoke that expertise. It is precisely those questions pertaining to the perceived lack of accountability inherent to liberal democracy that populists tend to denounce in their critique of what they depict as a form of “undemocratic liberalism,” as I will now discuss.

²¹ Peter Weingart, “Scientific expertise and political accountability: paradoxes of science in politics” (1999) 26(3) S.P.P. 151, 152.

²² Weingart, “Scientific expertise and political accountability: paradoxes of science in politics”, 152.

²³ Weingart, “Scientific expertise and political accountability: paradoxes of science in politics”, 154., referring to Jürgen Habermas, “Verwissenschaftlichte Politik in demokratischer Gesellschaft” in H. Krauch, W. Kunz and H. Rittel (eds), *Forschungsplanung* (Vienna: Oldenbourg, 1966), pp.130-144.

POPULISM AND SCIENTIFIC EXPERTISE IN THE UNITED KINGDOM

The existing literature on populism offers multiple definitions of the concept. The most widely cited is probably the one put forward by Cas Mudde, who defines it as a “thin-centred ideology” that “considers society to be ultimately separated into two homogeneous and antagonistic groups, ‘the pure people’ versus ‘the corrupt elite’, and which argues that politics should be an expression of the *volonté générale* (general will) of the people.”²⁴ Another influential definition is that of Jan-Werner Müller, who states that populism is “a particular moralistic imagination of politics, a way of perceiving the political world that sets a morally pure and unified – but ultimately fictional – people against elites who are deemed corrupt or in some other way morally inferior.”²⁵ Populism has also been defined by scholars as a discourse,²⁶ a mode of persuasion,²⁷ a political strategy,²⁸ a political style (or performance),²⁹ a political logic,³⁰ a political phenomenon,³¹ a particular type of constitutional pathology,³² a mode of political identification,³³ a representative process³⁴ and a theory of social choice,³⁵ to name only a few.

²⁴ Cas Mudde, “The Populist Zeitgeist” (2004) 39(4) *Gov. Oppos.* 541, p.543.

²⁵ Jan-Werner Müller, *What is Populism?* (Philadelphia, PA: University of Pennsylvania Press, 2016), pp.19-20.

²⁶ See, e.g. Paris Aslanidis, “Is Populism an Ideology? A Refutation and a New Perspective” (2016) 64(1) *P.S.* 88; Benjamin De Cleen and Yannis Stavrakakis, “Distinctions and Articulations: A Discourse Theoretical Framework for the Study of Populism and Nationalism” (2017) 24(4) *Javnost* 301, 310.

²⁷ Michael Kazin, *The Populist Persuasion: An American History* (Ithaca, NY: Cornell University Press, 1998), p.3, p.5.

²⁸ Kurt Weyland, “Clarifying a Contested Concept: Populism in the Study of Latin American Politics” (2001) 34:1 *C.P.* 1, 14; Hans-George Betz, “Conditions Favoring the Success and Failure of Radical Right-Wing Populist Parties in Contemporary Democracies” in Yves Mény and Yves Surel (eds), *Democracies and the Populist Challenge* (New York, NY: MacMillan, 2002) 197, p.198; Robert S. Barr, “Populism as a political strategy” in Carlos de la Torre (ed), *Routledge Handbook of Global Populism* (Abingdon: Routledge, 2019), p.44.

²⁹ Benjamin Moffitt and Simon Tormey, “Rethinking Populism: Politics, Mediatisation and Political Style” (2014) 62(2) *P.S.* 381, 387, 389; Benjamin Moffitt, *The Global Rise of Populism: Performance, Political Style, and Representation* (Redwood City, CA: Stanford University Press 2016), p.35. See also Tom Ginsburg and Aziz Z. Huq, *How to Save a Constitutional Democracy* (Chicago: The University of Chicago Press, 2018), p.72.

³⁰ John B. Judis, *The Populist Explosion: How the Great Recession Transformed American and European Politics* (New York, NY: Columbia Global Reports, 2016), p.14.

³¹ Carlos de la Torre, *Populist Seduction in Latin America* (2nd ed) (Athens, OH: Ohio University Press, 2010), p.199.

³² Nicholas W. Barber, “Populist leaders and political parties” (2019) 20(2) *G.L.J.* 129.

³³ Francisco Panizza, “What is contested and what is not in the debate about populism”, paper presented at the LSE Graduate Conference on Populism, 3 November 2017, referring to Oscar Reyes, “Skinhead conservatism: a failed populist project” in Francisco Panizza (ed), *Populism and the Mirror of Democracy* (London: Verso, 2005), p.99.

³⁴ Nadia Urbinati, *Me, The People: How Populism Transforms Democracy* (Cambridge, MA: Harvard University Press, 2019), p.5.

³⁵ Mark Tushnet and Bojan Bugarcic, “Populism and Constitutionalism: An Essay on Definitions and Their Implications” (2020) (SSRN working paper).

Acknowledging that populism is a matter of degree³⁶ and may take many forms,³⁷ I adopt, for the purposes of this article, a “minimalist”³⁸ definition, comprising two key elements: (1) a framing of the political world divided into two opposing groups – between *them* and *us*, between *gouvernants* and *gouvernés*, more specifically between the ruling elite and the “real” or “ordinary”³⁹ people; and (2) a focus on popular sovereignty and plebiscitary instruments – as the unitary articulation of public power – accompanied with a rejection of mediated politics and institutional intermediaries, perceived as illegitimately and unjustly thwarting the expression of the “will of the people.”⁴⁰

From a constitutional theory perspective, populism is often presented as based upon a Schmittian, *decisionist* approach.⁴¹ Under that view, the avowed aim of populists is to serve the general will through a re-politicisation of democratic life, including the constitution.⁴² In the same vein, liberal democracy is criticised by populists for its inherently anti-political⁴³ nature: under the ideal-typical populist worldview, liberalism is said to *depoliticise* democracy through its strong emphasis on unaccountable (and thus anti-democratic) liberal institutions and intermediaries, which provide unjustified constraints on the popular (and democratic) will.⁴⁴

³⁶ See, e.g. Barber, “Populist leaders and political parties”, 134. In fact, many (if not most) comparative-oriented scholars view populism as a matter of degree, on a continuous, “more-or-less” scale rather than in a dichotomous, “either-or” way. For a critique of that form of “degreeism”, however, see Takis S. Pappas, “Modern Populism: Research Advances, Conceptual and Methodological Pitfalls, and the Minimal Definition” (2016) *Oxford Research Encyclopedia of Politics*.

³⁷ See, e.g. M. Tushnet and B. Bugarcic, “Populism and Constitutionalism: An Essay on Definitions and Their Implications” (2020); Mark Tushnet, “Varieties of Populism” (2019) 20(2) G.L.J. 382; Bojan Bugarcic, “Could Populism Be Good For Constitutional Democracy?” (2019) 15 A.R.L.S.S. 41. See also David Fontana, “Unbundling Populism” (2018) 65 U.C.L.A.L.R. 1482.

³⁸ See also Nadia Urbinati, “Political Theory of Populism” (2019) 22 A.R.P.S. 111.

³⁹ Other formulations include the “forgotten” or “silent” people, amongst others.

⁴⁰ See also, in that regard, Raphaël Girard, “Populism, ‘the People’ and Popular Sovereignty” in Maria Cahill, Colm Ó Cinnéide, Seán Ó Conaill and Conor O’Mahony (eds), *Constitutional Change and Popular Sovereignty: Populism, Politics and the Law in Ireland* (Abingdon: Routledge, 2021) (forthcoming).

⁴¹ See, e.g. Julian Scholtes, “The complacency of legality: Constitutionalist vulnerabilities to populist constituent power” (2019) 20(3) G.L.J. 351, pp.354-355.

⁴² *Ibid.*

⁴³ In that regard, and for other theoretical foundations of populism, see, e.g. Carl Schmitt, *The Concept of the Political* [1932] (Chicago: The University of Chicago Press, 2007) (translation).

⁴⁴ On the populist claim that liberalism *depoliticises* the framework for politics in a polity (and in democracy in general), see Paul Blokker, “Populism as a Constitutional Project” (2019) 17(2) I.J.C.L. 535, 536.

Populists thus generally appear to be fundamentally opposed, at least in principle, to what they perceive as the “technocratic”⁴⁵ or “undemocratic”⁴⁶ tendencies of liberal democracy, that is to say its strong reliance upon the role of unelected experts of various sorts – including scientific experts – and governmental bodies and agencies, alongside other institutional constraints and intermediaries. This is also in line with what some have called the rise of “undemocratic liberalism,” that is the transfer of power from Parliament to government bodies, central banks and supranational organisations, amongst others, which, they say, results in the weakening of important elements of popular participation, including the very process of voting.⁴⁷ Populists, for their part, often view themselves as pro-political and democratic, as viable remedies to the defects of liberal democracy, by contrast to their technocratic counterparts who are depicted as distant, unelected and thus unaccountable.⁴⁸

Yet, as will be argued in more detail below, using the UK Government’s response to the Covid-19 pandemic as my case study, the picture portrayed in the literature on populism – that is, the perceived or assumed dichotomy between populism and scientific expertise or technocracy – is, at best, incomplete. But before elaborating on the response to this unprecedented health crisis, it is first necessary to discuss how, and to what extent, Boris Johnson, his Cabinet and other members of the Conservative party frequently turn to rhetoric and actions that may plausibly be characterised as populist.

It is hard to deny that Johnson has, since he became Prime Minister in July 2019, frequently used rhetoric closely aligned with the ideal-typical populist discourse. First, he has repeatedly made references to the so-called “will of the people,” notably when speaking about the outcome of the Brexit referendum. In the same vein, he has expressed strong distrust of intermediaries such as Parliament, accusing, for instance, Members of

⁴⁵ For the purposes of this paper, I adopt Christopher Bickerton and Carlo Invernizzi Accetti’s definition of “technocracy” as a “call for a transfer of political power to actors and institutions drawing legitimacy from their technical competence and administrative expertise.” See Christopher Bickerton and Carlo Invernizzi Accetti, “Populism and Technocracy” in Cristóbal Rovira Kaltwasser *et al* (eds), *The Oxford Handbook of Populism* (Oxford: Oxford University Press, 2017), pp.330-331. See also Christopher Bickerton and Carlo Invernizzi Accetti, “Populism and technocracy: opposites or complements?” (2015) 20(2) C.R.I.S.P.P. 186. Pierre Rosanvallon, for his part, would define “technocracy” as “a system of government in which the resources of a nation are organised and controlled by experts for the collective good.” See Pierre Rosanvallon, *Le bon gouvernement* (Paris: Seuil, 2015), p.97.

⁴⁶ See, e.g. Sheri Berman, “The Pipe Dream of Undemocratic Liberalism” (2017) 28(3) J. Democr. 29.

⁴⁷ See, e.g. Yascha Mounk, *The People vs Democracy: Why our Freedom Is in Danger and How to Save It* (Cambridge, MA: Harvard University Press, 2018), p.59.

⁴⁸ Mounk, *The People vs Democracy: Why our Freedom Is in Danger and How to Save It*, p.69. See also Berman, “The Pipe Dream of Undemocratic Liberalism”, 37.

Parliament of “thwarting the will of the British people” over Brexit.⁴⁹ Second, he has made some (at least indirect) claims to exclusive representation, sometimes depicting his government as “the people’s government.” For instance, during his election victory speech in December 2019, he said, flanked with “The People’s Government” signs in the background, that: “You [the people of this country] voted for all these things, and it is now this government, the people’s government, it is now our solemn duty to deliver on each and every one of those commitments.”⁵⁰

Johnson is not the only one who has used this type of rhetoric. Although not necessarily populist *per se*, other, high-profile Conservative party members have also resorted, in recent years, to rhetoric closely aligned with that of the ideal-typical populist discourse.⁵¹ For instance, former Prime Minister Theresa May made frequent allusions to the “will of the people,” notably in reference to the outcome of the 2016 Brexit referendum. She equated the will of the majority of the electorate at the time of the referendum with the “will of the people,” even claiming to have “[t]he strength and support of 65 million people” willing to make Brexit happen.⁵² One may also include the weak government response (or lack thereof)⁵³ to the incendiary *Daily Mail* headline of 4 November 2016, which depicted as “enemies of the people” the three High Court judges who had ruled against the Secretary of State in the *Miller (no. 1)* case⁵⁴ or, more recently, the calls for a complete overhaul of the judiciary,⁵⁵ including calls for the abolition of the

⁴⁹ For instance, Johnson said in the House of Commons, after failing a second attempt to trigger an early general election on 10 September 2019, that “[he] must warn members [of Parliament] that their behaviour in thwarting the will of the people is undermining respect for this House in the country.” *Hansard*, HC Vol.664, col.620 (9 September 2019). Other Conservative members, from former Prime Minister Theresa May to backbenchers, have also employed similar rhetoric. See, e.g. “Don’t thwart the will of the people over Brexit - Sir Edward Leigh” (12 June 2018) *BBC*, available at <https://www.bbc.co.uk/news/av/uk-politics-44457827/don-t-thwart-the-will-of-the-people-over-brexit-sir-edward-leigh> [Accessed 6 August 2020]. Even after taking power with a comfortable parliamentary majority, Johnson maintained his difficult relationship with Parliament. See, e.g. Meg Russell, “Boris Johnson and parliament: an unhappy tale in 13 acts” (1 September 2020), available at <https://constitution-unit.com/2020/09/01/boris-johnson-and-parliament-an-unhappy-tale-in-13-acts/> [Accessed 12 November 2020].

⁵⁰ See “Election results 2019: Boris Johnson’s victory speech in full” (13 December 2019) *BBC*, available at <https://www.bbc.co.uk/news/election-2019-50777071> [Accessed 6 August 2020].

⁵¹ See Girard, “Populism, ‘the People’ and Popular Sovereignty” in Cahill, Ó Cinnéide, Ó Conaill and O’Mahony (eds), *Constitutional Change and Popular Sovereignty: Populism, Politics and the Law in Ireland*.

⁵² Government of the United Kingdom, “The United Kingdom’s exit from and new partnership with the European Union” (February 2017), White Paper presented to Parliament by the Prime Minister, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf, p.3.

⁵³ See Lacey, “Populism and the Rule of Law”, 80. See also, generally, Joshua Rozenberg, *Enemies of the People? How Judges Shape Society* (Bristol: Bristol University Press, 2020).

⁵⁴ *R (Miller) v The Secretary of State for Exiting the European Union* [2016] EWHC 2768. The UK Supreme Court also ruled in favour of the applicants a few months later in *Miller* [2017] 2 W.L.R. 583.

⁵⁵ Suella Braverman, “People we elect must take back control from people we don’t. Who include the judges.” *Conservative Home* (27 January 2020), available at <https://www.conservativehome.com/platform/2020/01/suella>

Supreme Court,⁵⁶ as well as the setting up of the Independent Review of Administrative Law, established in July 2020 notably to ensure that judicial review “is not abused to conduct politics by another means or to create needless delays.”⁵⁷

This particular type of discourse was in fact not solely aimed at judges and *judicial* expertise but, rather, at expertise *tout court*. Cabinet minister Michael Gove, for instance, regularly clashed with experts of all sorts, including technocratic organisations. In an interview with Sky News in June 2016, he said “I think the people in this country have had enough of experts with organisations from acronyms saying that they know what is best, and getting it consistently wrong.”⁵⁸ This view was also, arguably, the main driving force behind the popular Brexit slogan “Take back control,” which refers to the idea that power should be in the hands of the “real” or “ordinary” people, rather than in those of elites, institutions (including the European Union) and their distant, unaccountable experts. The latter was reflected in clear terms in Michael Gove’s remarks, when he said: “I’m asking the British public to take back control of our destiny from those organisations which are distant, unaccountable, elitist and don’t have their own interest at heart.”⁵⁹ This type of rhetoric alludes to a rejection of technocratic politics as “elitist” and as incapable of understanding and resolving the “harm” done to “ordinary” people, which translates into an anti-expertise rhetoric and simplistic policy demands such as “Get Brexit Done.”⁶⁰

A BLEND OF POPULISM AND TECHNOCRACY: THE UK GOVERNMENT’S RESPONSE TO THE COVID-19 CRISIS

braverman-people-we-elect-must-take-back-control-from-people-we-dont-who-include-the-judges.html [Accessed 6 August 2020]. See also “Get Brexit Done: Unleash Britain’s Potential”, Conservative Party 2019 Manifesto, available at https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf, p.48 [Accessed 6 August 2020].

⁵⁶ This comment came from Conservative Member of Parliament Desmond Swayne. He said, in response to the *Miller (no. 2)/Cherry* case that the Supreme Court “well overstepped the mark” and said that the Conservative manifesto for the 2019 general election “should have a commitment to abolish the Supreme Court.” See “‘This Parliament is a dead Parliament’: Attorney general says MPs have no ‘moral right’ to be in the Commons”, *ITV News* (25 September 2019), available at <https://www.itv.com/news/2019-09-25/mps-return-to-westminster-after-bombshell-legal-ruling/> [Accessed 6 August 2020].

⁵⁷ Independent Review of Administrative Law, available at <https://www.gov.uk/government/groups/independent-review-of-administrative-law> [Accessed 15 January 2021].

⁵⁸ Henry Mance, “Britain has had enough of experts, says Gove” (3 June 2016) *Financial Times*, available at <https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c> [Accessed 5 July 2020]. For a video of the interview, see “Michael Gove – ‘EU: In Or Out?’” (3 June 2016) *Sky News*, available at <https://news.sky.com/video/michael-gove-argues-for-the-uk-to-leave-the-eu-in-a-live-sky-q-a-10303640> [Accessed 5 July 2020].

⁵⁹ “Michael Gove – ‘EU: In Or Out?’”.

⁶⁰ Simon Tormey, “Temporalities of populism: Towards a sociology of ‘populisation’” (17 September 2020), keynote speech, 4th Populism Specialism Group (PSA) workshop, “The ‘Populist Moment’: Temporality, Transformations, Crises”.

Given the above, many would have expected or assumed that the UK Government's response to the Covid-19 crisis would have, in pure populist fashion, involved a high level of distrust towards scientific experts – for instance by claiming to take power back from “unelected technocrats who are free from political accountability”⁶¹ or dismissing them as distant, unaccountable and elitist. Yet, perhaps surprisingly, the central government's response to the crisis has involved a seemingly unique, *sui generis* blend of populist and technocratic elements.⁶²

On the one hand, Johnson's rhetoric and actions have continued to have strong populist undertones, particularly at the beginning of the crisis. Despite the rapid progression of the outbreak, he continued to appear as “one of the people” and to make appeals to authenticity.⁶³ Perhaps with a view to appear “close to the public,” he at times wilfully ignored scientific expertise, notably by continuing to shake hands with members of the public despite experts' advice. In March 2020, on the very same day the government's Scientific Advisory Group for Emergencies (SAGE) issued a formal advisory notice against such practice, Prime Minister Johnson even boasted about shaking hands with (potential) Covid-19 patients. He said: “I was at a hospital the other night where I think a few there were actually coronavirus patients. And I shook hands with everybody, you'll be pleased to know, and I continue to shake hands.”⁶⁴ Through this rhetoric, he emulated the anti-elitist and anti-scientific attitude that is commonly associated with populism.⁶⁵

In terms of policy actions, the UK Government was also criticised by many for its “slow” response to the outbreak,⁶⁶ raising questions as to whether its response to the virus was a form of what David E. Pozen and Kim Lane Scheppele call “executive underreach”

⁶¹ The formula is from Mounk, *The People vs Democracy: Why our Freedom Is in Danger and How to Save It*, p.69.

⁶² Some would perhaps be tempted to call this blend “technopopulism.” For different uses of this term, see, e.g. Carlos de la Torre, “Latin America's Authoritarian Drift: Technocratic Populism in Ecuador” (2013) 23(3) *J. Democr.* 33, 37; Christopher Bickerton and Carlo Invernizzi Accetti, “‘Techno-populism’ as a new party family: the case of the Five Star Movement and Podemos” (2018) 10(2) *Cont. It. Pol.* 132; Bickerton and Accetti, “Populism and Technocracy” in Kaltwasser *et al* (eds), *The Oxford Handbook of Populism*; Bickerton and Accetti, “Populism and technocracy: opposites or complements?” (2015) 20(2) *C.R.I.S.P.P.* 186.

⁶³ As he often did during the 2019 election campaign. On populist appeals to authenticity, more generally, see Ming-Sung Kuo, “Against instantaneous democracy” (2019) 17(2) *I.J.C.L.* 554.

⁶⁴ Rowena Mason, “Boris Johnson boasted of shaking hands on day Sage warned not to” (5 May 2020) *The Guardian*, available at <https://www.theguardian.com/politics/2020/may/05/boris-johnson-boasted-of-shaking-hands-on-day-sage-warned-not-to> [Accessed 6 August 2020].

⁶⁵ See, e.g. Alexi Gugushvili *et al*, “Votes, populism, and pandemics” (2020) 65 *I.J.P.H.* 721, 722.

⁶⁶ Alex Wickham and Katie J.M. Baker, “Scientists Advising the UK Government on the Coronavirus Fear Boris Johnson's Team Is Using Them As ‘Human Shields’”. (22 April 2020) *BuzzFeed News*, available at <https://www.buzzfeed.com/alexwickham/coronavirus-uk-scientists-human-shields> [Accessed 5 August 2020].

– that is, “a national executive branch’s willful failure to address a significant public problem that the executive is legally and functionally equipped (though not necessarily legally required) to address.”⁶⁷ When it finally chose to act, the UK Government’s interventions remained for the most part “pragmatic” (if not simplistic), and often appeared ambiguous or ill-targeted to the complexity of the issues presented, as the government’s “Stay at Home. Save lives. Protect the NHS” and, later, the “Stay Alert. Control the virus. Save lives” slogans illustrate. Moreover, as discussed in more detail in the next part of this article, Johnson’s government had frequent recourse to statutory instruments, a form of secondary (or delegated) legislation that allows ministers to legislate with only minimal parliamentary involvement.⁶⁸ Whilst this may to some extent be inevitable in an emergency, several ministers of the UK Government nevertheless clearly showed a certain populist, Schmittian distrust in the ability of parliament to act swiftly and decisively – particularly in conditions of existential urgency.⁶⁹

On the other hand, many of Johnson’s actions have also been resolutely *technocratic*, with a strong reliance on scientific advice and expert opinion.⁷⁰ Indeed, early on in the crisis he appeared at press conferences flanked with two senior scientific experts, chief medical officer Chris Whitty and chief scientific adviser Sir Patrick Vallance. And whilst he initially seemed to rely on the controversial “herd immunity” theory, he reversed course after an Imperial College London scientific study revealed that the absence of preventive measures could lead to up to 500,000 Covid-19-related deaths in the country – affirming his reliance and faith in scientific expertise.

Johnson and his Cabinet have also made frequent references to scientific studies and opinions, which seem to have informed their decision-making – even leading to backtracking on certain issues, for instance on whether face coverings should be made mandatory in shops. With public opinion divided on this question, Johnson’s government initially appeared very reluctant to make face coverings mandatory, with Cabinet Office minister Michael Gove saying: “I trust people’s good sense.”⁷¹ Yet, just two days later, the

⁶⁷ David E. Pozen and Kim Lane Scheppele, “Executive Underreach, in Pandemics and Otherwise” (2020) 114(4) A.J.I.L. 608.

⁶⁸ Statutory Instruments Act 1946.

⁶⁹ This is discussed in more detail in the last section of this article.

⁷⁰ See, e.g. Beth Rigby, “Coronavirus: ‘Populist’ PM takes non-populist approach when it comes to pandemics” (20 March 2020) *Sky News*, available at <https://news.sky.com/story/coronavirus-populist-pm-takes-non-populist-approach-when-it-comes-to-pandemics-11956657> [Accessed 5 August 2020].

⁷¹ Lucy Campbell and Matthew Weaver, “UK coronavirus live: Johnson U-turns on masks as experts fear up to 120,000 Covid-19 winter deaths” (14 July 2020) *The Guardian*, available at <https://www.theguardian.com/world/live/2020/jul/14/uk-coronavirus-live-news-updates-boris-johnson-face-masks?page=with:block-5f0d72388f08a2bb7d3dc1e8> [Accessed 5 August 2020].

government changed its position and announced that face masks would become mandatory in shops, only a day after experts expressed their fear that up to 120,000 people could die of Covid-19 in the coming winter.⁷² Many Covid-19-related policy decisions were thus said to be “led by science,” or “following scientific guidance,” with a strong reliance on scientific expertise.

This blend of populism and technocracy may, at first blush, appear surprising and even contradictory. Indeed, many commentators on populism have treated populism and technocracy as antagonistic to each other, if not even complete opposites.⁷³ Yet, as Christopher Bickerton and Carlo Invernizzi Accetti point out, the two concepts nevertheless share critical affinities and complementarities.⁷⁴ Those affinities and complementarities, I would argue, have at least two important repercussions for UK public law – and for the principle of accountability in particular.

First, both populism and technocracy share a deep, inherent hostility to the liberal democratic idea of *political and institutional mediation*. The latter refers to “concrete social and institutional forms that exist ‘in between’ the state and the individual,” which are tasked with collecting individual preferences (through elections, for instance) and recasting them as the will of a corporate body (such as Parliament).⁷⁵ Indeed, many populists are hostile to institutional mediators and intermediaries in general – such as Parliament and courts, for instance – which are often criticised for thwarting the will of the people.⁷⁶ In other words, populists are highly sceptical about institutions, procedures and representation, which can block the unitary, collective expression of public power. As the voice of the people is muted through these intermediaries, populists claim, the avowed aim of populism is therefore to give government back to the people, notably through less mediation and more direct democracy, including via referendums and other plebiscitary instruments.⁷⁷

Technocrats and government agencies, for their part, are also often hostile to political and institutional mediation, notably on the basis that the latter can be a source of corruption and inefficiency. The ideal solution to a problem, under the ideal-typical

⁷² Campbell and Weaver, “UK coronavirus live: Johnson U-turns on masks as experts fear up to 120,000 Covid-19 winter deaths”.

⁷³ See, e.g. Mounk, *The People vs Democracy: Why our Freedom Is in Danger and How to Save It* (i.e., “illiberal democracy” vs “undemocratic liberalism”).

⁷⁴ Bickerton and Accetti, “Populism and Technocracy” in Kaltwasser *et al* (eds), *The Oxford Handbook of Populism*, p.329.

⁷⁵ Bickerton and Accetti, “Populism and Technocracy” in Kaltwasser *et al* (eds), *The Oxford Handbook of Populism*, p.329.

⁷⁶ For an example, see the discussion above on Prime Minister Johnson accusing Members of Parliament of “thwarting the will of the British people” over Brexit.

⁷⁷ See Girard, “Populism, ‘the People’ and Popular Sovereignty” in Cahill, Ó Cinnéide, Ó Conaill and O’Mahony (eds), *Constitutional Change and Popular Sovereignty: Populism, Politics and the Law in Ireland*.

technocratic worldview, is thus one determined by independent and qualified experts, regardless of popular views or opposition. In a sense, therefore, technocracy can hardly take opposition nor even popular participation into account.⁷⁸ In other words, technocrats – just like populists – are highly wary (if not distrustful) of political and institutional mediating bodies, such as legislatures and courts, which can come in the way of the expression of a unique truth.

Second, populism and technocracy are also both opposed to the liberal-democratic conception of *procedural legitimacy*.⁷⁹ Populists are sceptical about liberal-democratic constitutional structures and institutions that mediate the relationship between the (unitary) people and political power.⁸⁰ In their view, liberal democracy illegitimately fragments sovereignty. Under the populist worldview, the popular will and the political truth it contains cannot be properly captured through procedures and institutions; on the contrary, it is above them (or, as some would argue, “prior to and outside” them).⁸¹ In other words, populists often accuse intermediaries, such as political parties, mass media and other mediating institutions of illegitimately “filter[ing] out the authentic choices from the people, turning democracy into the instrumentality of the privileged sectors of society.”⁸² From that perspective, institutional mediators, unlike referendums and other means of direct democracy, thus fail to give voice to the authentic views and opinions of the electorate.

Yet, technocrats also tend, albeit in a different way, to *delegitimise* those procedural rules – and the very institutions they represent. Indeed, they tend to remove policy issues, such as matters pertaining to the economy, for instance, away from the political terrain and to transfer them into the hands of experts – including national and supranational institutions – and therefore away from political contestation. Their goal, in other words, is to implement an “objective” form of political power, with a single, scientifically-backed truth, by contrast to what was perceived (at least in the early 20th century) as the “poison” of partisan politics.⁸³

⁷⁸ Miguel A. Centeno, “The new Leviathan: the dynamics and limits of technocracy” (1993) 22(3) *Theory and Society* 307, 313, as cited in Bickerton and Accetti, “Populism and Technocracy” in Kaltwasser *et al* (eds), *The Oxford Handbook of Populism*, p.330.

⁷⁹ Bickerton and Accetti, “Populism and Technocracy” in Kaltwasser *et al* (eds), *The Oxford Handbook of Populism*, pp.330-331.

⁸⁰ Neil Walker “Populism and Constitutional Tension” (2019) 17(2) *I.J.C.L.* 515, 520.

⁸¹ Bickerton and Accetti, “Populism and Technocracy” in Kaltwasser *et al* (eds), *The Oxford Handbook of Populism*, p.330.

⁸² Kuo, “Against instantaneous democracy”, 557.

⁸³ Rosanvallon, *Le bon gouvernement*, p.97.

In short, populism and technocracy share important similarities, including a deep hostility to the liberal-democratic idea of institutional mediation and its conception of procedural legitimacy. In that regard, the work of Bickerton, Accetti, Centeno and others is insightful insofar as it highlights the various complementarities between the two phenomena. It explains their appearance (or occurrence) as two “pathologies” of liberal democracy, as two extremes that converge in their critique of a specific political form, namely party democracy. Populism and technocracy can thus be seen as “evil political twins, each feeding off and intensifying the other. The first seeks to limit democracy to save liberalism, while the second seeks to limit liberalism to save democracy.”⁸⁴ However, this theory does not necessarily, in and of itself, explain why populists sometimes have recourse to *both* populist and technocratic elements, including a strong reliance on scientific expertise, *at the same time*.⁸⁵ In my view, the UK Government’s response to Covid-19 reveals more than mere similarities or affinities between populism and technocracy as two distinct, yet complementary concepts; it reveals, rather, a more complete *alignment* or *synergy* between populism and expertise than is commonly assumed.

POPULISM AND EXPERTISE AS A SHIELD FROM POLITICAL ACCOUNTABILITY?

Having highlighted the links and complementarity between populism and technocracy, I now move to the central question that this article raises: can the alignment or synergy between populism and expertise *undermine* accountability? With reference to the UK Government’s response to Covid-19, I argue that technocratic means – and reliance on scientific expertise in particular – can indeed be useful to populists to the extent that they can be *utilised* as a way to depoliticise issues and at least partially shield them from direct

⁸⁴ Berman, “The Pipe Dream of Undemocratic Liberalism” (2017), 37.

⁸⁵ That being said, Bickerton offers an explanation in a more recent piece. See Chris Bickerton, “The rise of the technopopulists” (21 October 2020) *New Statesman*, available at <https://www.newstatesman.com/international/2020/10/rise-technopopulists> [Accessed 9 November 2020]. In this piece, Bickerton explains that the political strategies involving various combinations of populism and technocracy that have emerged in the context of the Covid-19 pandemic are due to the decline of democratic politics as a clash between rival ideologies, namely between the left and the right. In other words, political competition – which was originally viewed as a struggle between class-based identities and social structures – has now been replaced with a more superficial “competition between rival ways of synthesising appeals to ‘the people’ and appeals to expertise.” For Bickerton, this shift in political competition would explain the recent “technopopulist” responses to Covid-19 in the United Kingdom (and elsewhere, including in the United States). My explanation, as will be discussed in more detail in the next part below, is of a different nature. In my view, the synergy between populism and technocracy can be explained, at least in part, by the fact that experts (and technocratic means in general) can be *useful* to populists to depoliticise issues and escape accountability.

political accountability. This, in turn, allows populists to escape responsibility for their policy choices in a way that, perhaps ironically, resembles the populist critique of the “undemocratic” nature or “technocratic” tendencies of present-day liberal democracy.

Scientific expertise has not only influenced or shaped policy responses to the outbreak, it has also acted as a shield from political contestation – notably by allowing the executive to make inherently political decisions hidden under the veil of science. Indeed, by presenting themselves as “merely following scientific advice,”⁸⁶ Johnson and his Cabinet have used science as a shield (and scientific experts as “human shields”⁸⁷) from democratic accountability. Policy responses to the Covid-19 crisis were removed from the political realm and transferred into the hands of members of SAGE and other experts who advise them: if these policies were to fail, scientific experts would be to blame – not the executive.

And this is exactly what happened. For instance, when facing accusations by Labour party leader Keir Starmer in April 2020 to the effect that the government had been “slow” in responding to the crisis and in implementing lockdown restrictions, First Secretary of State Dominic Raab subtly redirected the blame to scientific experts: “We have been guided by the scientific advice, the chief scientific adviser, the chief medical officer, every step along the way.” Chancellor Rishi Sunak also deflected criticism in a similar fashion by saying that the Cabinet had taken “the right decisions at the right time, according to the scientific advice we received.”⁸⁸ Yet, there are indications that the government’s chief scientific adviser, Sir Patrick Vallance, was actually arguing strongly in favour of imposing an earlier lockdown to fight the virus in mid-March 2020 – that is, a week before a full lockdown was introduced – until he was rebuked by other senior officials, including then-Cabinet secretary Sir Mark Sedwill.⁸⁹

By using scientific expertise as a shield from criticism, Johnson’s government followed the ideal-typical technocratic discourse, according to which legitimacy resides not in procedural conceptions, but rather “in the expertise and knowledge of technocrats and it is to be shielded from the partisanship associated with political competition.”⁹⁰ Under that technocratic discourse, the voice of experts is presented as quasi-unanimous and

⁸⁶ Alex Stevens, “Governments cannot ‘just follow the science’ on COVID-19” (2020) 4 *Human Nature* 450.

⁸⁷ Wickham and Baker, “Scientists Advising the UK Government on the Coronavirus Fear Boris Johnson’s Team Is Using Them As ‘Human Shields’”.

⁸⁸ Wickham and Baker, “Scientists Advising the UK Government on the Coronavirus Fear Boris Johnson’s Team Is Using Them As ‘Human Shields’”.

⁸⁹ Secunder Kermani, “Chief scientist ‘told off’ for lockdown plea” (14 September 2020) *BBC*, available at <https://www.bbc.co.uk/news/health-54150538> [Accessed 14 September 2020].

⁹⁰ Bickerton and Accetti, “Populism and Technocracy” in Kaltwasser *et al* (eds), *The Oxford Handbook of Populism*, p.331.

objective, as if all scientific experts were speaking from a single voice, with little or no internal (nor external) opposition. Yet, and as discussed previously, there are strong signs that scientific experts were – and still are – at loggerheads over how the government should respond to a major public health crisis like Covid-19.⁹¹

There are signs, moreover, that the UK Government took a certain opportunistic approach to scientific knowledge, notably in formulating governmental guidance. One example is guidance regarding personal protective equipment (PPE) for medical staff. In January 2020, after consulting with a group of experts, the UK government officially designed Covid-19 as a “High Consequence Infectious Disease” (HCID),⁹² the result of which was that health workers dealing with Covid-19 patients were to be supplied with high-grade PPE. Yet, on 13 March 2020, faced with a potential shortage of high-grade PPE after failing to stockpile enough crucial protective equipment, including life-saving FFP3 respirator masks, the decision was made to downgrade the status of Covid-19 and the guidance on PPE; NHS staff were notably told that it is safe to wear less protective equipment, including basic surgical masks, in all circumstances except the most high risk ones.⁹³

In other contexts, senior government members have also used a highly selective approach to scientific expertise, at times using the latter in an instrumental way, as a defence or shield from criticism. For instance, when facing criticism pertaining to the UK’s Covid-19 death rate, Johnson frequently referred to an article by Professor David Spiegelhalter⁹⁴ addressing the difficulties and complexities in comparing death rates across countries. Yet, Professor Spiegelhalter himself asked the Prime Minister and others to “stop using [his] article to claim we cannot make any international comparisons yet,” adding that he “refer[s] only to detailed league tables – of course we should now use other

⁹¹ Sarah Boseley, “Covid UK: scientists at loggerheads over approach to new restrictions” (22 September 2020) *The Guardian*, available at [https://www.theguardian.com/science/2020/sep/22/scientists-disagree-over-targeted-versus-nationwide-measures-to-tackle-covid?CMP=fb_gu&utm_medium=Social&utm_source=Facebook&fbclid=IwAR1UNz&ekw-7az-e7RzyboDoVu9S\]56NEd-4a3E5i0ru0r38XiSn4LboF8lo#Echobox=1600754567](https://www.theguardian.com/science/2020/sep/22/scientists-disagree-over-targeted-versus-nationwide-measures-to-tackle-covid?CMP=fb_gu&utm_medium=Social&utm_source=Facebook&fbclid=IwAR1UNz&ekw-7az-e7RzyboDoVu9S]56NEd-4a3E5i0ru0r38XiSn4LboF8lo#Echobox=1600754567) [Accessed 22 September 2020].

⁹² The list of HCID is determined and agreed by a joint Public Health England and NHS England HCID Programme. See HCID Guidance, available at <https://www.gov.uk/guidance/high-consequence-infectious-diseases-hcid> [Accessed 15 January 2021]

⁹³ “Coronavirus: UK failed to stockpile crucial PPE” (28 April 2020) *BBC*, available at <https://www.bbc.com/news/newsbeat-52440641> [Accessed 6 August 2020].

⁹⁴ David Spiegelhalter, “Coronavirus deaths: how does Britain compare with other countries?” (30 April 2020) *The Guardian*, available at <https://www.theguardian.com/commentisfree/2020/apr/30/coronavirus-deaths-how-does-britain-compare-with-other-countries> [Accessed 5 August 2020].

countries to try and learn why our numbers are high.”⁹⁵ In the same vein, Foreign Secretary Dominic Raab also turned to scientific expertise to defend the country’s toll, suggesting that the UK’s Covid-19 death rate was high only because the country was a “world leader” in “collecting statistics.”⁹⁶

What the above discussion demonstrates is a certain politicisation of science – something that has also been witnessed in other countries currently ruled by populists⁹⁷ – and, simultaneously, a form of *de*-politicisation of the various policy responses to Covid-19. Indeed, by carefully selecting scientific knowledge (sometimes in an instrumental way) and repeating that they are merely “following scientific advice” when facing political calculations and uncertainties,⁹⁸ the UK Government ministers have simultaneously politicised science *and* attempted to remove highly contentious and political issues from the realm of politics. Of course, it is possible that they had strong political incentives to take such a technocratic approach. Indeed, they may have noticed that a simple way of overcoming or neutralising political opposition is to simply remove politically contentious issues from the political domain and to constrict the realm of partisan contestation, most often by presenting scientific expertise as a sort of “apolitical and indisputable tablet of stone.”⁹⁹ Yet, perhaps ironically, this has resulted in the very same *de*-politicisation of contentious issues that populists are said to abhor.

Of course, the indeterminate, changing, disputable and sometimes conflicting nature of scientific expertise makes it more susceptible to being used in an instrumental way, by populists and non-populists alike. In other words, the utility of expertise often depends on political exigency. What is distinctive in the populist use of scientific expertise by the UK Government, however, is the way in which scientific expertise has been presented as if experts were speaking from a single, monolithic bloc, as if there was such thing as a unique “scientific truth,” – and the way in which science has been utilised as an almost complete shield from political accountability.

⁹⁵ Vincent Wood, “Coronavirus: Expert cited by Boris Johnson to defend UK’s death toll tells prime minister to ‘please stop’” (7 May 2020) *The Independent*, available at <https://www.independent.co.uk/news/uk/politics/coronavirus-uk-death-toll-comparison-world-boris-johnson-david-spiegelhalter-a9502921.html> [Accessed 5 August 2020].

⁹⁶ Wood, “Coronavirus: Expert cited by Boris Johnson to defend UK’s death toll tells prime minister to ‘please stop’”.

⁹⁷ Or countries that were, until recently, ruled by populists, such as in the United States under the Donald Trump presidency. See, e.g. Tom Frieden *et al*, “We ran the CDC. No president ever politicized its science the way Trump has.” (14 July 2020) *Washington Post*, available at <https://www.washingtonpost.com/outlook/2020/07/14/cdc-directors-trump-politics/> [Accessed 10 September 2020].

⁹⁸ Peter Russell, “COVID-19: ‘Following the Science’ is Not a Defence, Says Brian Cox” (19 May 2020) *Medscape*, available at <https://www.medscape.com/viewarticle/930738> [Accessed 10 September 2020].

⁹⁹ Stevens, “Governments cannot ‘just follow the science’ on COVID-19”.

To be sure, ministers are generally expected to take into account scientific advice when making policy decisions. This principle is rooted in the Ministerial Code – described as a “core principle underpinning the UK’s unwritten constitution”¹⁰⁰ – which provides at paragraph 5.2 that “Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions, and should have regard to the Principles of Scientific Advice to Government.”¹⁰¹ And SAGE, of course, has a role to play in that regard. But it has recently been criticised as a highly secretive group operating as a “virtual black box,” with its list of members kept secret (at least initially),¹⁰² closed meetings and semi-private deliberations (with minutes of meetings often released weeks later, if at all), as well as confidential recommendations.¹⁰³ Some have also questioned its independence.¹⁰⁴ At any event, SAGE’s lack of transparency¹⁰⁵ – particularly its untimely release of meeting minutes, statistics and other key data – makes it hard to see to what extent the executive is actually following expert advice, despite its claim to do so.¹⁰⁶

From a public law perspective, it also becomes more difficult for Parliament and other bodies, including the media, to perform their scrutiny functions. This is compounded by the fact that the UK Government has made extensive use of statutory instruments, the

¹⁰⁰ Nyasha Weinberg and Claudia Pagliari, “Covid-19 reveals the need to review the transparency and independence of scientific advice” (16 June 2020) *UK Constitutional Law Blog*, available at <https://ukconstitutionallaw.org/2020/06/16/nyasha-weinberg-and-claudia-pagliari-covid-19-reveals-the-need-to-review-the-transparency-and-independence-of-scientific-advice/> [Accessed 5 August 2020].

¹⁰¹ Cabinet Office, *Ministerial Code* (August 2019), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf, p.12.

¹⁰² Since 4 May 2020 (and at the time of writing), the names of the participants in meetings of SAGE and other related sub-groups during the Covid-19 pandemic are publicly available online. However, the SAGE website states that “[t]hose who did not give permission [to publish their names] have not been named.” See <https://www.gov.uk/government/publications/scientific-advisory-group-for-emergencies-sage-coronavirus-covid-19-response-membership> [Accessed 4 November 2020].

¹⁰³ Mark Landler and Stephen Castle, “The Secretive Group Guiding the U.K. on Coronavirus” (23 April 2020) *New York Times*, available at <https://www.nytimes.com/2020/04/23/world/europe/uk-coronavirus-sage-secret.html> [Accessed 5 August 2020]. See also “End the Sage Secrecy” (24 October 2020), *The Spectator*, available at <https://www.spectator.co.uk/article/we-deserve-to-know-what-sage-is-saying> [Accessed 9 November 2020].

¹⁰⁴ See, e.g. Weinberg and Pagliari, “Covid-19 reveals the need to review the transparency and independence of scientific advice”.

¹⁰⁵ See, e.g. Anthony Costello, “Opinion: The Sage advice must be published now to find where Britain got coronavirus wrong” (22 May 2020) *UCL*, available at <https://www.ucl.ac.uk/news/2020/may/opinion-sage-advice-must-be-published-now-find-where-britain-got-coronavirus-wrong> [Accessed 5 August 2020].

¹⁰⁶ For instance, the minutes from SAGE’s 23 September 2020 meeting (released three weeks later) showed that its members called for a “circuit-breaker” lockdown to halt the “exponential rise in cases.” The government initially rejected SAGE’s advice, without clearly explaining why, nor setting out its evidence. See Tom Sasse, “The government should publish its evidence for rejecting a second coronavirus lockdown” (15 October 2020) *Institute for Government*, available at <https://www.instituteforgovernment.org.uk/blog/government-should-publish-its-evidence-rejecting-second-coronavirus-lockdown> [Accessed 12 November 2020]. A four-week England lockdown was later announced, on 31 October 2020. See “Covid-19: PM announces four-week England lockdown” (31 October 2020) *BBC*, available at <https://www.bbc.co.uk/news/uk-54763956> [Accessed 12 November 2020].

most common form of secondary (or delegated) legislation, including hundreds of statutory instruments subject to the “made negative procedure,” which does not require prior parliamentary scrutiny.¹⁰⁷ As a result, some have argued that Parliament has been effectively sidelined.¹⁰⁸

Of course, it is critical that the executive be able to act quickly and flexibly in the face of an immediate, ever-changing and serious threat like the Covid-19 health crisis. In the context of the review of the temporary provisions of the *Coronavirus Act 2020* in September 2020, the Secretary of State for Health and Social Care, Matt Hancock, frequently referred to the need for the government to continue to have “the powers at [their] disposal to respond quickly” to the progression of the virus; he also made reference to the importance of “striking the right balance between acting at pace and proper scrutiny.”¹⁰⁹ Yet, the two are not necessarily contradictory. As Joelle Grogan and Nyasha Weinberg point out,

“[e]ven where the protection of public health can justify action taken rapidly with more limited scrutiny by the legislature, there must be a robust and heightened commitment to the clear and transparent communication of the rationale for government action, substantiated with public debate and external engagement”¹¹⁰

This is an important requirement that the UK Government has not always followed. Potentially underlying this apparent resistance to greater scrutiny is the idea that the executive has access to a select group of scientific advisers like SAGE whose level of expertise can compensate, at least in part, for the lack of consultation, transparency and scrutiny in circumstances of extreme urgency and existential threat. This justification, in turn, reinforces the new synergy of science and populism under conditions of existential urgency.¹¹¹

But beyond the important concerns relating to the parliamentary oversight of executive action and the transparency and independence of the government’s main

¹⁰⁷ As of 1 January 2021, the government had laid 330 coronavirus-related SIs before the UK Parliament, including 226 subject to the “made negative procedure”, and a total of 1023 SIs covering all subjects since the week commencing on 27 January 2020, when the first coronavirus-related SI was laid. See Hansard Society, *Coronavirus Statutory Instruments Dashboard*, available at <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard#total-coronavirus-sis> [Accessed 4 January 2021].

¹⁰⁸ See, e.g. Meg Russell and Lisa James, “MPs are right. Parliament has been sidelined” (28 September 2020) UCL *Constitution Unit*, available at <https://constitution-unit.com/2020/09/28/mps-are-right-parliament-has-been-sidelined/> [Accessed 12 November 2020].

¹⁰⁹ *Hansard*, HC Vol.681, col.388 (30 September 2020).

¹¹⁰ Joelle Grogan and Nyasha Weinberg, “Principles to Uphold the Rule of Law and Good Governance in Public Health Emergencies” (RECONNECT – Policy Brief, August 2020) at p.20.

¹¹¹ I thank the anonymous reviewer for raising this point.

scientific advisers, one crucial problem with the UK Government’s approach to the Covid-19 crisis is that science – just like “the people” – does not speak with a single, unitary voice. In other words, like the myth of the “will of the people,”¹¹² there is arguably no such thing as a “scientific approach to science.” Science does not dictate a single, unitary response on how to respond to major health crises. For that reason, and in the same way, policymakers ought to recognise that delegating decisions to scientific experts and agencies – or even relying on them – remains an inherently political act. As one commentator has explained in a different context, the act of

“[d]elegating decisions to experts does not mean politicians can then take a ‘hand’s off’ approach and simply let the experts get on with decision making. Effective governance necessarily involves adequate resources and political support from politicians.”¹¹³

In the end, voters expect their elected representatives to make policy decisions based on sound, scientifically-backed evidence – amongst other considerations – but to ultimately take responsibility for them.

A final way in which populists have tried to escape political accountability is by shifting the burden not only to scientific experts, but also to the public itself. Indeed, some politicians have recently seemed to transfer the onus of controlling the virus from the executive to the public itself, notably by appealing to the public’s “common sense.”¹¹⁴ For example, in a speech in Parliament in May 2020, Johnson made a strong appeal to the people’s “common sense” in the application of the Covid-19 rules, saying he put his hope in the public to continue to apply the “good, solid, British common sense,” which, he said, had worked in phase one of the fight against the virus and would, “no doubt,” work in the other phases of the fight against the disease as well.¹¹⁵ In fact, ministers have not only put the emphasis on the public’s “common sense” in the application of the measures, but even, at times, in their enforcement. For instance, junior Justice minister Kit Malthouse urged

¹¹² See Albert Weale, *The Will of the People: A Modern Myth* (Cambridge: Polity, 2018).

¹¹³ Matt Wood, “The political dilemma of expertise – More than just public trust in experts” (17 June 2019) *LSE Blog*, available at <https://blogs.lse.ac.uk/impactofsocialsciences/2019/06/17/the-political-dilemma-of-expertise-more-than-just-public-trust-in-experts/> [Accessed 10 September 2020].

¹¹⁴ Corsino San Miguel, “What is law and what is guidance? The risks of depending on British common sense” (1 July 2020) *LSE Covid-19 Blog*, available at <https://blogs.lse.ac.uk/covid19/2020/07/01/what-is-law-and-what-is-guidance-the-risks-of-depending-on-british-common-sense/> [Accessed 5 July 2020].

¹¹⁵ *Hansard*, HC Vol.676, col.30 (11 May 2020).

the public in September 2020 to report their neighbours for any suspected breaches of the “rule of six” limits on social gatherings in England.¹¹⁶

Whilst this reliance on the people’s “common sense” may at first sight appear as a form of collective empowerment, there is always a chance that it could lead to a transfer of accountability from the executive to the public itself. If the measures were to fail (or be less effective than initially expected), the general public – rather than the government – would be to blame. In other words, the responsibility for the failure would lie in the *application* (or, sometimes, the enforcement) of the measure, rather than on the soundness and efficiency of the measure itself. The onus of beating the virus would therefore fall on the public, rather than on the executive or even the scientific experts upon whom ministers claimed to rely in making their policy decisions.

CONCLUSION

In this article, I have questioned the perceived or assumed dichotomy between populism and expertise. Using the United Kingdom Government’s response to the Covid-19 crisis in 2020 as a case study, I have argued that there is in fact an *alignment* or *synergy* between populism and scientific expertise, one that has important implications for public law, particularly for the principle of accountability. I began with a discussion of the idea of accountability and its importance for representative democracy, before considering the concept of populism and its relationship to scientific expertise. I then described how the UK Government’s response to Covid-19 has involved a blend of populist and technocratic elements, highlighting the complementarities between the two phenomena. I argued, finally, that the policy responses by the central government to the novel coronavirus has shown that the alignment or synergy between populism and scientific expertise can in fact undermine accountability insofar as experts can be utilised by populists as a means to depoliticise policy issues and shield themselves from direct political accountability.

My argument is not just a contribution to a theoretical debate amongst students of populism, nor just a public policy concern; it is a matter of good governance which has salient constitutional implications. Indeed, in the context of the Covid-19 crisis, it is important to remind our politicians that they are elected representatives – not delegates of the electorate, nor subordinates to experts. Whilst many policy areas such as health policy

¹¹⁶ “Coronavirus: Report ‘rule of six’ breaches, minister urges” (14 September 2020) BBC, available at <https://www.bbc.co.uk/news/uk-54142699?fbclid=IwAR2FV07CJ-RdqnJhrgaPV55-vFI4TDnMDMcl6LMSDanYCKxOOB46Qx-RYM> [Accessed 14 September 2020].

heavily depend on the role of trained professionals and scientific experts, elected representatives should not hide behind these experts, nor should they necessarily shield the latter from direct inquiry and scrutiny. On the contrary, such experts should be at the forefront of open discussion with members of the public, notably with a view to promoting debate about the merits of particular policy choices. Of course, consulting with scientific experts such as SAGE and its members and advisers may help the executive make well-informed decisions, but SAGE's lack of transparency in its current form ultimately makes it difficult to provide real-time scrutiny of the executive's actions. In the end, government ministers, as elected representatives, need to take responsibility for their policy decisions rather than invoking science as if it were unanimous, indisputable and therefore apolitical.

In the same way, shifting the onus from the experts to the public's "common sense," as the government has recently implied, would also be ill-conceived. Whilst it may at first sight appear as a form of transfer of responsibility back to the British people who in turn may view it as a form of collective empowerment, it is ultimately disempowering to have political leaders who refuse to take responsibility for their actions. In a representative democracy, elected officials have to decide for themselves what policy action is the most desirable in any given situation. And it is precisely these elected officials, not scientific experts nor the general public, who should be held accountable for their own miscalculations and mistakes, as inevitable as they may be.