

Reflections on the Supreme Court Ruling

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Today's landmark decision by the Supreme Court of the UK has sent yet more shock waves through the British political landscape. The decision is particularly notable in its verdict in that the prorogation by the UK Prime Minister, Boris Johnson, having been found to be unlawful, should be "remedied" by the Speaker of the House of Commons, John Bercow.

In so doing, the Court noted the supreme principle of Parliamentary sovereignty in the UK, and of the essential function that Parliament exerted on the UK Government in terms of "scrutiny" and "accountability". Bercow has since stated the Parliament must reconvene as soon as possible, and that it will sit at 11.30am tomorrow to reconvene.

But here I want to consider the practical implications, and in particular, what this will mean for Johnson's tenure as Prime Minister, and indeed of the trajectory of Brexit itself. As yet the PM has not responded, and reports suggest that he will "take his time" in doing so. Despite his public posturing, I suspect the verdict will still have come as a shock to him, and a "rude interruption" to his schedule in New York at the UN General Assembly.

On the issue of Johnson's tenure as PM, despite growing calls for him to "reconsider his position" as PM he cannot simply be forced to resign – in reinforcing the principle of Parliamentary sovereignty the Court has made it possible for Parliament to reconvene earlier. However, Johnson would still be PM, and he could only be removed from office via a successful motion of No Confidence in his government.

How likely is this to happen? I would suggest that given his – in the eyes of a majority of MPs – manifestly "untrustworthy" behaviour, that the odds of a No Confidence motion being submitted by the Leader of the Opposition, Jeremy Corbyn, have increased substantially. Given the senior (ex) Tories such as Ken Clarke, Father of the House, have

expressed preference for a Corbyn caretaker Government over the current regime, this is now increasingly possible.

However, the Parliamentary arithmetic remains uncertain, and it is unclear how other disaffected Tories, such as Amber Rudd, would vote on such issues. Rudd poignantly released a tweet stating that (in addition to her claim that Cabinet was not “shown the legal advice” on the reasons for Prorogation) that:

“I regret that the PM, who entered office with such goodwill, went down this route. *I urge him to work with Parliament to pass a Deal.*” (my emphasis)[1]

This suggests that Johnson still has some wriggle room to try and effect a withdrawal from the EU by October 31st – more on this below.

Johnson could of course offer his resignation to the Queen and approach her to ask Jeremy Corbyn to try and form a Government – ostensibly in the hope that he could not secure the parliamentary numbers to do so, and thereby bring about the early election that he seeks. However, on this I reiterate my point above that Corbyn could yet secure the numbers to effect a caretaker “Rainbow Coalition” and thereby ensure that Brexit is delayed further.

So, for me, I think that the effect of the Supreme Court ruling will increase the pressure on Johnson to bring a variant of Mrs May’s failed withdrawal agreement back to the Parliamentary table, in the hope that he could win over disaffected Tories to his cause.

The statements from Rudd above certainly attest to this possibility for example. He could yet do so by the 19th October – that date after the EU Council summit whereby Parliament has mandated him to seek a revised Withdrawal Agreement for approval. Failing this he would then have to ask Brussels for an extension to our EU membership to at least January 31st 2020.

So the extra week or so of Parliamentary sitting time that this ruling has entailed could yet work for him, if that is his plan. Looking at it in the cold light of day, he has only two choices to effect a Withdrawal Agreement from the EU – stick with Mrs May’s agreement with its

entire UK “backstop” – or revert to the EU’s original offer of a Northern Ireland-only backstop.

Given that Johnson no longer has a majority, even with DUP support, he might well present this to Parliament, in order to secure the necessary votes to get Brexit over the line by October 31st. the Parliamentary outcome would then depend on two groups of MPs; the hard Brexit “European Research Group” of Tory MPs, many of whom see any kind of Withdrawal Agreement as a “sell out” (a position analogous to that of the Faragists).

However, I am of the view that they could vote with the Government this time, to get Brexit “over the line” – particularly if a Northern-Ireland only backstop allows the UK Government to start pursuing an “independent trade policy” upon the expiry of a transition period (currently proposed at December 2020) whereby the status quo ante of EU membership in effect, would continue to apply. Notably, Johnson has appeared to rule out requesting an extension to this transition period.

It would then fall to a second group of MPs, namely Labour MPS in strongly Leave-voting areas such as Ruth Smeeth (Stoke-on-Trent) and Lisa Nandy (Wigan), who could be tempted to cross the floor to vote with the Government on a revised Withdrawal Agreement. I think 10-20 Labour MPs could be tempted to do so.

And it is for this reason I think that the “official” position reached at the Labour Party conference yesterday was to avoid explicitly backing Remain and leaving it until after the formation of a Labour Government to effect a referendum (where the choice would be between Remain, or leave with a withdrawal agreement). That is, that they have to offer the public another chance to vote on the issue, so as to assuage Labour Leave voters, and also to keep such MPs on side and avoid them voting with the Government.

None of this would solve Johnson’s dilemmas and the next few weeks promise to be extremely interesting..

[1] <https://www.theguardian.com/politics/live/2019/sep/24/brexit-supreme-court-latest-news-labour-conference-starmer-says-it-is-obvious-labour-will-back-remain-despite-conference-vote-live-news>

