

# Constitutional Principles: Necessary Safeguards not Nuisance Hindrance

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Recent political events have pushed constitutional principles in the UK constitutional system into the public consciousness.

Previously, little attention has been paid to these things, and their effect upon the way that the UK constitutional system operates. However they have come to the fore mainly because of the way they have affected the current government's pursuit of its current policy on Brexit.

This has been most evident in the way that the argument over the prorogation of Parliament has been exercised by the Government, but also extends to other principles, like the rule of law.

There has been extensive academic discussion of prorogation – see for example Paul Craig's excellent blog post [here](#). The purpose of this blog is not to engage in this type of discussion. Instead I want to consider the way this demonstrates attitudes towards the legal system of the UK in public consciousness.

The UK has, as we know, an uncodified constitution. Although it cannot be said to be completely unwritten, those parts that are, are not contained in a single, codified document. This results in a lot of the constitutional principles laying largely unknown until such point that they become relevant to current political activity, and this is what we have seen recently regarding such matters as prorogation.

[David Allen Green](#), legal and constitutional commentator and FT journalist, has pointed out correctly that constitutional law should be boring and largely only of relevance to “constitutional nerds”. In effect, when our constitution is functioning normally, then it is invisible to most of us as we get on with our lives. Those in government adhere to constitutional conventions because it is an expected part of the way that the UK constitution operates. Such is the case with prorogation of Parliament.

Up until recently, this was a largely unknown procedure whereby Parliament was brought to an end for a short period of time in order for a new parliamentary session to take place. However, the reason this has been called into question now is because of the conventions regarding its use.

It has commonly been used only to suspend Parliamentary activity or a few days, and the start of a new session with a Queen's Speech containing the new legislative agenda of the Government.

The English High Court has ruled, in *Miller 2*, that challenges to the exercise of the prerogative to prorogue Parliament not justiciable (not challengeable in law) because it is governed by convention. Conventions are not legally binding, but there is an expectation that they would be followed in normal circumstances.

The importance of convention in an uncodified constitution has been understated by the way in which the Johnson Government has made use of prorogation in this particular circumstance. It is the abuse of convention that threatens a constitutional crisis.

Critics of this prorogation of Parliament have challenged the Government's stated purpose of preparation of a new legislative agenda because it reduces the opportunity for parliamentary scrutiny of the Government's actions in the lead up to the 31<sup>st</sup> October Article 50 deadline.

Although the House of Commons would normally suspend activity during the coming month for party conference season, prorogation stops more than just the open sessions in the Commons – it also shuts down all parliamentary committees, the House of Lords, indeed all parliamentary activity.

So why should we care about such concerns? This has been framed in some quarters (check social media for example) as a leave vs remain issue, with remainers using conventions to stop Brexit, and leavers disregarding conventions in order to 'get on with it'. However, this goes to the heart of the issue with the UK constitution.

If such conventions can be disregarded by one party, what is to stop future governments from similarly doing so? Some may congratulate

themselves for their ability to 'game' the system, but the purpose of uncodified parts of the UK constitution is an important part of their exercise. For a Government limiting the ability of Parliament to call them to account, what is next? Open criticism of the judiciary? (This is contrary to convention also.) Ignoring the Rule of Law? (Ministers have cast doubt on whether the Government will adhere to the requirement to request an extension to avoid 'no deal' under the European Union (Withdrawal) Act No.6.)

Constitutional principles may appear inconvenient for those attempting to give effect to the Government's policy on Brexit, but these principles do need to be adhered to because otherwise it raises concerns about what state the constitution would be in after our exit from the EU.