

## Postings to this blog

I am receiving too many contributions and too many long contributions. At this time of heightened emotions on both sides of the EU argument I also do not wish to encourage personal abuse and embittered language and accusations.

I will therefore be deleting more contributions if they contain aggressive language, personal allegations and the like, even if they also contain some good points. I will also delete more repetitious and inaccurate submissions.

Comparisons with Hitler and the Nazis are rarely helpful or appropriate, and the language of violence and punishment not normally desirable in a strong exchange of democratic opinions.

As posters know, anything submitted to this site is submitted to be published here, with the names and identifiers sent in also appearing . I do not know if someone is using their own name or an assumed name and if two people post using the same name I do not adjudicate as to whether they can both use their chosen name. As posters here wish to talk to each other on this site I suggest they show each other some courtesy.

If two people write in as Superman with different views it would simplify life if one would use Superman1 or some other descriptor to differentiate. If two Sue Smiths write in it would be helpful if one wrote in as Sue Smith of Lancaster and one as Sue Smith of York or whatever. This is something people wishing to share the same online website should work out for their mutual advantage.

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## Undermining the UK's bargaining position

The Supreme Court decision has one obvious impact on the UK. It weakens the government's attempts to get a renegotiated Agreement with the EU. It has led to the EU casting doubt on the government's grip on events, and given hope to those in EU councils who argue that hanging tough and playing it long is the best approach for the EU to adopt given the political uncertainties in London.

I confess I have always been sceptical about the ability of the UK to pull a decent Withdrawal Agreement out from the one sided and unfair Agreement Mrs May put her name to. The problems with it are much wider than the backstop, as we often discussed. Part of my reason is so many in the UK establishment seem to be on the EU's side. I am not, however, in any doubt that there is far more chance of getting an improved Agreement if the UK unites behind its

government negotiating team than if opposition forces continue to send every signal to the EU that it will repay them to hold out rather than making sensible concessions.

The opposition focus on the need for an agreement is bizarre. They will not set out the detail of what sort of an Agreement they want. They confuse the Withdrawal Agreement with the Future Partnership Agreement. They deny the existence of various Agreements all ready for an exit without signing the Withdrawal Agreement.

In practice there is no such thing as a No Deal Brexit. There will be a many deals Brexit. There is such a thing as an acceptable Withdrawal Agreement given EU determination. The Opposition both say we need one and then vote it down every time it appears. They seem to be saying they will do everything they can to stop Brexit altogether. They also greatly strengthen the bargaining hand of the EU making it even less likely we will be offered a deal they would vote for.

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## Constitutional change

The government's defence yesterday of its action to prorogue Parliament was simple. They thought their actions were entirely legal and based on precedent. This was confirmed by the English High Court. The Supreme Court then decided to create a new legal test over prorogation and change it from being a matter for government and sovereign to decide into a matter than is justiciable under the new rules of prorogation set out by the Court. The government accepts their ability to do this. It will fall to a future Parliament to decide if Parliament wishes to continue with the approach set out by the Supreme Court or if it wishes to legislate to change the approach.

The heart of our constitution rests on a series of checks and balances. Our constitution is written down in various Acts of Parliament, court decisions, the rules or Standing Orders of Parliament and precedents where executive power has traditionally been used. An activist Supreme Court can change our constitution. An Act of Parliament can change our constitution. Executive action can change our constitution, as with the decision to negotiate and enter into the EU Treaties, though these were also subject to confirmatory Acts of Parliament. Parliament often passed them under government guidance that we would be failing to meet out international obligations entered into by the executive at the end of the negotiation if the Bill was not passed.

There is a daily battle between the three elements of the constitution. Parliament regularly criticises the executive and seeks to amend or change its ways. Courts regularly review government decisions and sometimes find them wanting. Government seeks more discretionary power by seeking wide ranging powers in Acts of Parliament, or general approvals of spending with considerable freedom to decide the detail of programmes.

In two wide ranging prerogative areas, the power to declare war and the power to negotiate a treaty, Parliament increasingly asserts its right to approve or prevent the decision. Past great wars have been entered into on the basis of substantial cross party support. Other wars have proved more contentious and have needed Parliamentary majorities with votes.

The battles so far over Brexit have concerned the need for an Act of Parliament to send the letter of notification of withdrawal, and the refusal of prorogation owing to the importance of the Brexit issue. The biggest clash lies ahead. The government claims it has authority to take the UK out of the EU on 31 October. There are two Acts of Parliament to that effect, a referendum vote and the 2017 Election result. It is the government's job to negotiate a possible new Withdrawal Agreement and to decide on a No deal or a Withdrawal deal exit. Some in Parliament say its European Withdrawal Act No 2 trumps the other two pieces of legislation and expects the Courts to enforce its requirement of the Prime Minister to seek a further delay in our exit. Is it good law to demand a PM to do the opposite of his promises and Manifesto? How are its terms enforceable?

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## Wither our constitution?

I was surprised to learn reading the Supreme Court text of Lady Hale's statement about the judgement that "Mr Mark Harper, chief whip" attended a meeting of the Privy Council at Balmoral on 28th August 2019.

I seem to recall Mark Harper ceased to be Chief Whip well before recent events.

I was also interested to read that "During a recess (as opposed to a Prorogation break) written Parliamentary Questions can be asked and must be answered." When we broke for the last summer recess the Order Paper told us written questions submitted after the last day of session would be tabled and answered when Parliament returned in September.

The Supreme Court argued that Prorogation was different from recess though there are many similarities.

Lady Hale argued that the memorandum from Nikki da Costa which recommended prorogation left out important matters Lady Hale wished to see in it. She stated that the "effect upon the fundamentals of our democracy was extreme".

Most of us believe in the separation of powers. We need independent judges to judge individual cases and sometimes to interpret Statute and Common Law, and all the time we are in the EU overarching EU law as well. Where Judges use their powers to interpret Statutes in ways Parliament does not like, then Parliament can of course amend the Statute to clarify the intent.

Parliament has more power to decide the law by passing Acts of Parliament and Statutory Instruments, but usually has no power to judge individual cases under the law. Parliaments develop their own relations with the Executive or government which is part of Parliament but also has independent powers to decide and spend beneath a general Parliamentary approval. By convention government proposes new laws to Parliament for Parliament's approval, amendment or rejection.

The danger of the present situation is no-one is in charge because the government no longer has a Parliamentary majority. We see daily jousting for temporary power or control of the agenda where no-one has the authority that comes from commanding a majority of MPs. The right answer is a General election so the public can decide who they want to govern the country. Instead we have a PM being held hostage by Parliament and Courts who are seeking to force him to do the opposite of what he has promised and believes to be right.

It cannot be the right answer to the big question of whether we remain or leave the EU to have that finally determined in a court of law based on an Act of Parliament rushed through against the wishes of the PM, the government and the majority who voted Leave in the referendum. Acts of Parliament were designed to provide sound and fair law for us all, not to be political traps and political statements against a Prime Minister who has insufficient MPs to endorse his view.

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## [The collapse of Thomas Cook](#)

The Thomas Cook business has been short of cash for much of the last decade, with refinancings to keep it going. At the end it was decided the business was so short of money that it had to go into liquidation. If it had gone into Administration that would have been an expression of more hope of finding a buyer for it as a going concern after some new financial restructuring.

The senior management of the company said their aim was to make it the "most loved holiday company". I doubt it is today. They wanted to take customers on a journey "from dream to experience". The experience this week is not quite what customers had in mind. We were told in the last annual report that the "customer" is "at our heart", and the employees put their "heart into it". Now the employees are out of a job.

In the last Report the Directors assured us they had stress tested its future viability as a business for a three year period. They said "the Directors have a reasonable expectation that the Group will be able to continue in operation and meet its liabilities as they fall due over the three year period of the assessment"

The Audit Committee also looked into viability and stated " there are no

material uncertainties as to the Group's ability to operate as a going concern" drawing on the three year stress tests no doubt.

Finally the auditors wrote "We conclude that the use of the going concern basis of accounting is appropriate and concur with the Directors that no significant uncertainty has been identified".

Thomas Cook did not short change the senior management when setting salaries and bonuses for them. People will be asking just how did this company fall so far and so fast this year after the positive statements made about it in the last Annual Report?