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The Unlawful Proroguing of UK's Parliament: Sign of the Times?

By Joel Ng

SYNOPSIS

The UK Supreme Court decision that proroguing parliament was unlawful may not be as meaningful as it first appears, if discontent is centred upon the establishment itself.

COMMENTARY

THE UNITED Kingdom Supreme Court's decision that British Prime Minister Boris Johnson's proroguing of parliament was unlawful is unprecedented in the UK's history. In the words of the judgement, unanimously agreed by 11 Supreme Court justices: "The question [of whether proroguing parliament was lawful] arises in circumstances which have never arisen before and are unlikely to arise again. It is a 'one-off'."

Such is the unique conjunction of events triggered by the British referendum to leave the European Union in 2016 that each turn of events in this tumultuous process has brought a catalogue of surprises. The world has watched with both horror and fascination as the UK traipsed through unprecedent after unprecedent over the last three years. But what are the implications, and is this as significant as it appears?

The Ruling and the Rule of Law

Previously, the English and Scottish courts had returned mixed verdicts on Johnson's proroguing: The English high court decided that it was a political decision beyond the jurisdiction of courts, while the Scottish appeal court decided that judges did have the authority to look at the case and it was unlawful because its main purpose was to obstruct parliament from overseeing the decisions of the cabinet. The Supreme Court agreed with the Scottish verdict.

The reaction by parliamentarians who had sought the ruling was that this was a victory for the rule of law – that the PM’s decisions remained “justiciable”, that is, subject to law. Moreover, proroguing parliament was deemed unlawful because “No justification for taking action with such an extreme effect has been put before the court”.

The UK Supreme Court’s decision appears to be a victory for the rule of law and a reassertion of due process, including checks and balances on the executive branch of government. Remain supporters cheered the decision as if supporting a football team that had just scored a goal.

It is, however, worth bearing in mind the forces that Johnson believes legitimises his right to act as such – resolute Leave supporters who believe they are being thwarted by a bureaucratic machinery determined to undermine their vote. The other side are still in the game, and arguably this goal was against the run of play.

PM Johnson’s Performance

When Johnson decided to prorogue the parliament at the end of August, he faced a torrent of criticism. His own MPs criticised it, and a senior Tory MP, Oliver Letwin, immediately introduced a bill to try to prevent a ‘No-Deal’ Brexit. Against party instructions, 21 Tory MPs supported the bill – which was passed – with one publicly crossing the floor to join the Liberal Democratic Party while Johnson was in mid-speech. The Conservatives lost their parliamentary majority in the process.

While this might have been the worst week of Boris Johnson’s fledgling reign as prime minister, a YouGov poll released that week showed Johnson easily beating his Labour party rival Jeremy Corbyn on leadership traits such as decisiveness, likeability, and even competence.

Whatever his faults in attempting to push through his interpretation of Brexit, the public seem relatively forgiving – it is Johnson, not Corbyn, who is pushing for a snap election.

Rule-breaking Sign of Strength?

Populists seem to be on the ascent, flagrantly disregarding institutional rules and norms on the back of public support, and getting away with as much of it as they will. How is it that the public appear to have so little regard for the institutions that made British law and rule respected and admired globally?

Polls prior to the Brexit referendum showed nearly two-thirds of British people wanted some powers delegated to the EU to be returned to London, with a similar percentage viewing the EU as inefficient and out of touch. This was much more than the final percentage that voted Leave in 2016.

In these quarters of the British public, the European multilateral system had failed them, and the rules needed changing. It was not Johnson but the former PM David Cameron, a Remain supporter, who had spent his seven years in charge portraying every discussion in Brussels as adversarial and every gain Britain had secured as a victory against an establishment.

Before opinions coalesced around Leave and Remain, there was a strong sentiment against European regulations nationwide, and this was weaponised by Leave campaigners in the referendum.

Domestic Opinion and Future of Multilateralism

But more than rules themselves, discontent about the years of austerity following the Global Financial Crisis led to a strong anti-establishment sentiment. Indeed, when the establishment is viewed as the problem, which European regulations were a part of, then rule-following becomes a political issue and part of the political contest itself.

This explains why “populists” or anti-establishment candidates have become popular – whether it is Corbyn on the left or Johnson on the right. Each has the credentials of challenging the establishment and its rules, that their supporters hope will give them the impetus to reset those rules to make them better work for the people.

The Supreme Court decision, then, may not be as significant as it initially appears: the key sentiments remain and are hardening on either side of the opinion divide. There is a danger that if domestic institutions cannot assert their authority against public opinion, then the anti-regulation stance stoked by EU-sceptics will spread into a general sentiment against other institutions.

If the rule of law is the handmaiden of multilateralism – the latter provides agreements between states for a broad, stable environment while the former ensures it remains thus – then Johnson’s brazen attempt to prorogue parliament also serves as a warning. Johnson’s stance retains support from large sections of the public, and he believes this gives him the legitimacy to push through what experts ranging from [former diplomats](#) to [industrialists](#) believe will be a disastrous No-Deal Brexit.

If the widespread perception exists that multilateral rules don’t work for them, then states may find it expedient to stoke domestic sentiments to confer upon themselves an assumed legitimacy when they seek unilateral changes. If the state’s institutions are insufficient to check such forces, then appealing to the multilateral rule of law as a defence will provide little respite for other states.

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