

Constitutional Problems in Britain

by Michael Curtis



John Bercow and Boris Johnson

At 10 Downing Street in London, the musing continues, I get along without you very well, of course I do. Sad deserted shore, my fickle friends are leaving, but then you know it's time for them to go. Across the purple sky, all the birds are leaving. In Britain political alignments and friendships are changing and a possible constitutional crisis exists as a result of two factors: the suspension of the UK Parliament for five weeks from the second week of September until October 14, 2019; and the acute differences over Brexit, exit from the European Union.

Unlike the U.S. and most countries in the world, the UK does not have a written constitution delineating the basic rules by which the political system operates. At the heart of the British political system are what are called "conventions of the constitution," rules that are observed though not written

in any document having legal authority. Violation of a convention is not only subjected to criticism but has often been regarded as “unconstitutional” behavior.

Among these conventions are three that are particularly pertinent today. One is that existing government not deprive the opposition party in the House of Commons of time and opportunity for discussion and criticism. A second is that the sovereign, the head of state, not act contrary to the wishes of government ministers, and is obliged to accept the advice of the existing prime minister. A third is that the monarch is politically neutral and has no discretion in decision making. The impartial monarch by convention accepts the advice of the prime minister.

The current crisis has arisen after Queen Elizabeth II approved the request of Prime Minister Boris Johnson to prorogue, or suspend, Parliament for five weeks. It is customary for the Queen every year to prorogue Parliament for a week or so to begin a new session. The difference in August 2019 is that the time period of five weeks is regarded by critics as excessive and unconstitutional.

The new prime minister Boris Johnson, 55 years old, is experiencing the struggle familiar in democratic political systems between the executive, the Government and the Legislature. On the present issue of the suspension of Parliament, the Speaker of the House of Commons, John Bercow, 56 years old, has strongly opposed the prime minister, and has become an articulate and outspoken spokesperson for the rights of MPs. This struggle is not new. It has a heritage of the crucial incident in January 1642 when the Speaker of the House defended the rights of Parliament against King Charles I who had come to the House to arrest five MPs for high treason. The Speaker's words on that occasion were historic: “I have neither eyes to see nor tongue to speak in this place but as the House is pleased to direct me, whose servant I am.”

But there is crucial difference today from the relations of the 17th century. The Speaker of the House, elected by its members, preserves order, supervises debates and continues to preside over them in the Chamber, calling on MPs to “speak.” However, an important convention of the unwritten British constitution is that the Speaker, once chosen, is a politically impartial, non-partisan figure acting on behalf of the whole membership, and who on assuming the position has renounced all links with his former political party, though he remains an elected MP from a constituency. Unlike the Speaker in the U.S. House of Representatives, the British Speaker does not participate in political debate or control any caucus.

For some time, Speaker Bercow has been critical of Government policy trying to extricate Britain from the EU, and called on MPs to hold the government accountable. He proclaimed that the suspension of Parliament for up to five weeks, ostensibly to work on a new legislative program, was really an attempt to sideline MPs, and for the government to secure its program for Brexit, since this would reduce the amount of time for opponents to prevent passage of any proposal by Boris Johnson of a possible no-deal Brexit in the UK divorce from the EU on October 31, 2019. Speaker Bercow agreed with those who thought a period of five weeks for Parliament not to sit was not justified by any legal or administrative argument. It was, Bercow said, a “constitutional outrage.” Trying to prevent parliament debating the issue of Brexit was an offense against the democratic process and the rights of MPs as the people’s elected representatives.

But has Bercow also acted “unconstitutionally?” Far from being neutral on the complex and controversial issue of Brexit and refraining from expressing personal opinions, he has been personally a Euroskeptic, and expressed his opinions on the question. Bercow, a fierce fighter who has been elected Speaker three times, has entered the arena of political dispute. He declared he would not be pushed around by the

executive branch or its agents, and that shutting down Parliament was an offense against the democratic process. He even continued the fight during his vacation in the four star Turkish resort Club Med Palmiye, where rooms cost \$1,500 a night, condemning the closing down of Parliament for a week or so longer than the usual annual prorogation. He remained in contact with those MPs, such as Sir Oliver Letwin, who opposed what they said was the government's wanting to stop Parliament from debating Brexit. The suspension has been legally challenged in a Scottish Court of Sessions in Edinburgh where Judge Lord Doherty rejected a ban to block suspension of Parliament.

Differences over Brexit and the exit from the EU on October 31, 2019 have lasted since the referendum on June 23, 2016 voted 52% to 48%, with high turnout of 72%, to leave the EU. Prime Minister Theresa May on March 29, 2017 triggered Article 50 of the Lisbon Treaty of 2009 the formal process proving for exit. Brexit was supposed to occur in March 2019, but has been delayed twice. Johnson has insisted the UK will exit on the October date, even with a non-deal formula. Parliament has already rejected the withdrawal agreement proposed by former Prime Minister Theresa May.

A major problem for many is the "backstop." At present there are no physical barriers, border posts, or checks on people or goods, crossing the border between Northern Ireland and the Republic of Ireland. The backstop is to ensure that this continues after the UK exits the EU. Boris wants the EU to remove this backstop, which could threaten the existence of the United Kingdom, and to agree to what he called alternative arrangements and technological solutions. At the core is the determination of Johnson to leave the customs union, the agreement that all EU countries charge the same taxes on goods from countries other than the EU, and the single market, according to which all goods, services, people, and money can move freely between all 28 EU states.

The political, partly constitutional, dispute is on with both sides able to use devices. Parliamentary opponents of Boris Johnson can introduce and win a vote of non-confidence against him which may lead to his resignation or a new election. But Johnson, who does not have a parliamentary majority, can refuse to resign and has tools to use against those who want to block a no deal exit. As leader of the Conservative party, Johnson can try to prevent Tory opponents (Remainers and others) from being candidates and running in the next general election which he can call at will. The outcome may depend on the PM's legislative program. At present, proposals are for investment initiatives, 20,000 new police officers, 10,000 extra prison places, NHS, hospital repairs, a higher rate of tax threshold.

Problems remain for Britain and for the EU. Will EU agree to extend the October 31 deadline? Will Speaker Bercow open the doors of the House of Commons in spite of prorogation? Will the 5-week suspension of Parliament affect the thinking of the EU on British exit? Will the government be forced to hold a second referendum on Brexit? Nevertheless, despite these complex issues, it is difficult to see the shortening of the time for parliamentary debate as a meaningful constitutional crisis or that Boris Johnson has whittled away the parliamentary system. or diminished the democratic nature of the British system.