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## Prorogation judgment pdf

42 Pages Posted: 5 Mar 2020 Last revised: Mar 8, 2020 Written: March 4, 2020 This SSRN paper is consolidated - I. unchanged, Comments posted in the Policy Exchange Judicial Power Project on September 28, 2019, and II. with a very small amendment, Additional Notes were posted there on February 7, 2020. This explains why this comment is sound. The annulment of the UK Supreme Court over the prorogation of the Queen's Parliament on 9/10 September 2019 contravenes Bill of Rights 1689 and the constitution's settled law on unjustified conventions governing the relationship between the Crown and Parliament and gives effect on the principle of ministerial accountability to Parliament. Academic efforts to deny the revolutionary character of the decision in *Miller/Cherry v Prime Minister* misrepresented the law of the constitution, and ignored key facts about the prorogation in *Erskine May's Parliamentary Law and Practice*, in the main 20th century textbook on constitutional law, and most importantly in the *Bill of Rights* which was considered with the history of the late Stuart prorogation. The errors of judgment and factual injustice at the heart of the Judgment are further explored, and confirm the unjustified legal wisdom set aside by the Judgment. Keywords: constitutional convention, parliamentary privilege, Bill of Rights, Dickey This item is featured in: External link: Document type Discussion paper Author Finnis, John Publisher Policy Exchange Publication date September 28, 2019 Subject(s) Collection Act Type social welfare material Supreme Court Assessment Report in Gina Miller's case on prorogation holds that In this paper John Finnis argues that the judgment itself undermines the sovereignty of a sincere parliament by circumventing the prohibition of legislation (art. 9 Bill of Rights 1689) on judicial questions about due process in Parliament. More from McHarg's social welfare collection, Aileen (2020) 'Supreme Court prorogation verdict : guardian of the Constitution or architect of the Constitution?', *Edinburgh law review*, 24 (1), Pp. 88-95.Item Type:ArticleFull text:(AM) Accepted Manuscript Download PDF (589Kb)Status:Peer-reviewedPublisher Web site: statement:This is an Accepted Manuscript of an article published by Edinburgh University Press in *Edinburgh Law review Recording Version* available online at: accepted:No date availableDate deposited:February 26, 2020Date first online publication:January 15, 2020Date first made open access:February 26, 2020Export: Search on GoogleScholar Supreme Court Judgment in *Miller/Cherry*[2019] UKSC 41, holds that Parliament is not ananankan on September 10, is by any measure an important assessment. Policy The Judicial Power Project commented on the litigation before this judgment was handed down, including by outlining our understanding of the legal issue in question and how the Supreme Court should resolve it: see primarily *Parliamentary Sovereignty and Prorogation Politics*. We have talked a lot about the judgment itself, including yesterday's published major critique by Professor John Finnis, entitled *Unconstitutional judgment of the prorogation of the Supreme Court*. The significance of judgment for our law and constitution will turn in part on how it is received, not only by MPs who may in the future use the authority of Parliament to reverse some of the consequences of judgment, but also by lawyers, judges, scholars and the general public. The way judgments are taken and remembered - as an affirmation of basic principles, or heroic developments of constitutional law, or as historic errors - will help shape common law, in this country but perhaps also in other common legal systems. Acceptance of assessment is clearly important and clearly there are a wide range of opinions within the law academy and the legal profession about the merits of the assessment, which makes it all the more important that the merits and implications of the assessment are carefully examined and debated freely. With this in mind, we are pleased to be able to publish a series of brief comments on the judgment, which will examine, among other things, the reasoning of the Supreme Court, the implications of the judgment for the constitutional role of the court more generally, the comparative perspective on and evaluation of the judgment and its broader consequences. We thank the many colleagues who have agreed to participate, especially to those who took different views to us about the merits of the Supreme Court ruling. The series begins today with Alison Young's judgment-filled defence, Nick Barber's argument that the judgment was a justifiable legal development in response to unconstitutional action, Anne Twomey's analysis of the extent to which the judgment invites legal challenges to the dissolution and assent of the kingdom and Jane Smith's exploration of the implications of judgment for the idea of non-justici Further commentary coming soon. Unlawful and cancelled Parliamentary suspension This article is part of a series about Boris Johnson's historical political position of election MP for Uxbridge and South Ruislip MP for Henley Editor of *The Spectator* Mayor of London 2008 Boris Island mayoral election Boris Bikes New Routemaster Unrest 2011 2012 Emirates Air Line mayoral election 2012 Summer Olympics Garden Bridge European Union Brexit referendum led to Vote Leave EU referendum after Yemeni Foreign Minister Intervention Zaghari-Ratcliffe case 2018 Salisbury attack Chequers leadership plan Party's 2019 election campaign polls support Darroch's reaction to the resignation of Britain's First Premiership Prime Minister and first term departure Suspension 21 rebels Benn Act 2019 prorogation Supreme Court case Brexit deal renegotiation Revision of the 2019 general election agreement The second ministry and the term of office Departure of the second ministerial 2020 reshuffle of the European Union (Withdrawal Agreement) Act 2020 pandemic COVID-19 vte On 28 August 2019, the UK Parliament was ordered to be embraced by Queen Elizabeth II on the advice of the Conservative prime minister, Boris Johnson, the suggestion then ruled to break the law. The prorogation, or suspension, of Parliament will take effect from between 9 and 12 September 2019 and last until the State Opening of Parliament on 14 October 2019; in the event, Parliament was suspended between September 10 and September 24. As Parliament is due to be held for five weeks and reunited just 17 days before The UK's scheduled departure from the EU on 31 October 2019, the move is seen by many opposition politicians and political commentators as a controversial and unconstitutional attempt by the prime minister to avoid parliamentary scrutiny of the Government's Brexit plans in the final weeks leading up to Brexit (britain's withdrawal from the EU) Johnson and his Government defended the prorogation of Parliament as a routine political process that usually follows the election of a new prime minister and will allow The government to refocus on the legislative agenda. In early September 2019, judges at the High Court and The Outer House of Session—the English and Scottish civil courts in the first instance—ruled that the matter was not subject to judicial review because it was a political decision; the appeal in the last case to the House of Commons—the Supreme Court of Scotland—overtuned the ruling of the House of Commons and ruled the prorogation was justifiable and unlawful. To resolve the dissent between the courts, both cases were brought to the UK Supreme Court which, on 24 September, ruled unanimously in *R (Miller) v Prime Minister and Cherry v Advocate General for Scotland* that the prorogation was justified and unlawful; As a result, the Order in the Council that ordered the prorogation was echoed, and the prorogation was considered void and there was no [legal] effect. [1] When Parliament resumed the following day, the prorogation ceremony was issued from the Journal of the House of Commons and business continued as if the ceremony had never happened. A much shorter second prorogation, this time for six days, begins on October 8. Background Part of a series of articles on Brexit Britain's withdrawal from the European Union Glossary of the terms Background Euroscepticism in the United Kingdom opting out of the EU Act Campaign for a Referendum People's Pledge Labour for a Bloomberg Referendum speech Project Fear Brexit: The Movie In or Out 2013–14 EU (Referendum) Bill (failed) 2015–2016 ACT (Gibraltar) Opinion poll on The UK's membership of the European Union 2016 Issue Referendum Endorsements Opinion Poll Results International reaction results Allegations of unlawful campaigning Immediately after the 2016 Ukip Election Department's 2016 Election to Quit the EU Department for International Trade Campaign Leave Campaign Vote Leave (official) Business for British Conservatives for British Students for Britain BeLeave Leave.EU Bpopleive The Freedom Association Better Off Out Grassroots Out Labour Leave Get Britain Out Bruges Group Campaign for an Independent Britain Remain campaigns Britain Stronger in Europe (official) Labour In for Britain European Movement UK Britain in Europe European Movement UK For our Future's Sake Healthier IN the EU InFacts Open Britain Our Future Our Choice Scientists for EU Other organizations Best for The United Kingdom Bollocks for Brexit Change UK Liberal Democrats Right to Vote Timeline Bloomberg speech Jan 2013 European Parliament elections May 2014 2015 general election May 2015 Referendum Act passed Dec 2015 Renegotiation ends Feb 2016 Referendum held June 2016 Theresa May becomes PM Jul 2016 Withdrawal notice sent Mar 2017 2017 general election June 2017 Brexit negotiations begin June 2017 Chequers plan presented Jul 2018 Withdrawal agreement released Nov 2018 Meaningful vote Jan-Mar 2019 Brexit delayed 12 April 2019 Cooper–Letwin Act passed Apr 2019 Brexit delayed until 31 October Apr 2019 European Parliament elections May 2019 Boris Johnson becomes PM Jul 2019 Benn Act passed Prorogation Sep 2019 & cancellation of withdrawal agreement Sep 2019 revised October 2019 Brexit delayed until 31 January Oct 2019 General election 2019 Dec 2019 The UK leaving the EU Implementation period Jan 2020 ends the UK portal 2020 December Eu portal prorogation is a political process that marks the end of the parliamentary session , and also refers to the time between the end of one parliamentary session and the start of another parliamentary session. [2] During the prorogation, neither Parliament nor its committee sat, and all motions, unanswered questions, and bills have not been senatized to automatically lapse, unless the so-called carry-over motion allows business to resume in the next session. [3] Prorogation is a force under royal prerogative and is commanded by the Queen-in-Council, that is, the Queen under the advice of the Privy Council. Prorogation takes place when the proclamation of the Kingdom ordering the prorogation is read to both Houses of Parliament; at that time, Parliament did not meet again until the State Opening of Parliament a few days later. [note 1] This differs from delays and recess, which is a short break that does not stop all parliamentary business, and dissolution, which dissolves Parliament before the general election. [5] Since 1854, prorogation has been carried out by the Lords Commissioners in place of Sovereign. [note 2] The Long Parliament, which prevented its own prorogation and reaffirmed the Petition of Rights in 1641. Historically, the prorogation of Parliament was the norm; The King would usually only call parliament to approve the royal tax and succinctly probable the body again. Prorogation is also used as a royal tactic to avoid parliamentary scrutiny; Elizabeth I suspended Parliament in 1578 to prevent a public debate about her courtship with Francis, Duke of Anjou. [7] The turning point came as a prelude to the English Civil War, when Charles I dizzly his third Parliament. Parliament objected to the imposition of a royal tax and issued a Rights Petition in response to the King's actions. When the then-Speaker of the House of Commons, John Finch, announced the end of the session, angry MPs sat on Finch, who briefly prevented the closure of Parliament until the Commons passed several motions condemning the abuse of The King's powers. After Parliament was embraced, Charles I ruled alone for eleven years—and even attempted to close the Scottish Parliament in 1638—and only remembered Parliament in 1640 to pass more taxes. [8] The second sitting of Parliament that year—the famous Long Parliament—passed a law preventing its prorogation or dissolution without its consent. In the event, he sat unsolved for another twenty years throughout the English brothers, Interregnum, and Restoration, although Pride's Purge in 1648 created the Buttocks Parliament and the expulsion of Oliver Cromwell from the Long Parliament and a convoy of alternate assemblies in 1653. [9] Although prorogation is usually uncontroverial, there are some noteworthy prorogations during major political disputes. In 1774, at the suggestion of Lord North, George III elected Parliament after the enactment of the Quebec Act, one of the triggers of the American Revolution; in 1831, peers took the umbrella for the prorogation of Parliament William IV after the Commons defeated the First Reform Bill seeking to expand the franchise; in 1948, Clement Attlee called a brief pro forma session of Parliament, which was dizzzyed after ten days, to expedite the ratification of the 1949 Act of Parliament, and in 1997, John Major suggested an early prorogation before the general election in May, at the height of the cash-for-questions affair. [10] The most controversial prorogation of late occurred in 2008 in Canada: Stephen Harper, the prime minister and leader of a minority conservative government, advised the governor-general, Michaëlle Jean, to prorogue Parliament before the budget. At that time, the Liberal and New Democrat parties planned to form an alternative government with the support of the Bloc Québécois; the prorogation delayed a motion of no confidence in the Harper government and by the time Parliament sits again, the deal between the opposition parties falls apart and Harper remains in office. Harper controversially advised Jean to prorogue Parliament again in late 2009, until after the 2010 Winter Olympics; at the time, Harper was under heavy scrutiny for his role in the affairs of Afghan prisoners. [11] A similar crisis concerning the use of royal powers to break the parliamentary deadlock occurred in Australia in 1975; the prime minister, Gough Whitlam, was controversially dismissed by the governor-general, John Kerr, and replaced by the Leader of the Opposition, Malcolm Fraser, who led a majority in the Senate. The House of Representatives, which is controlled by the Australian Labor Party, passed a motion of no confidence in Fraser, but was unable to reinstall Whitlam before Kerr dissolved Parliament before the federal election. [12] Ahead of Theresa May's prorogation proposals first appeared in early 2019. At the time, parliamentary hearings had been taking place since 13 June 2017, a few days after the general election which saw the governing Conservative Party, then led by Theresa May, lose its majority. Before 2010, parliamentary sessions usually began in October and ended in September; the general election will shorten the previous session and extend the following. After the 2011 Fixed-term Parliaments Act — which transferred the same royal powers to dissolve Parliament — was passed into law, the regular start of the parliamentary calendar moved to coincide with elections in May. [13] In June 2017, the Government announced the which will last for two to two to allow greater parliamentary scrutiny of Brexit and the repeal or amendment of the corpus of European law that will no longer affect the UK's departure from the EUROPEAN Union. [14] On 7 May 2019, the 2017–2019 Parliament became the longest parliamentary session since the Long Parliament four centuries earlier. [13] After the Brexit withdrawal agreement negotiated by the Government was rejected by Parliament in a so-called meaningful vote, prorogation was seen as an option for the Government to bring the agreement back for another vote; Erskine May, who conventionally codified parliamentary practice, said things that had been decided could not be brought back during parliamentary hearings if they had been substantively rejected. The speaker of the House of Commons, John Bercow, allowed a second vote on the agreement on 12 March 2019, which was rejected with a reduced majority. On March 18, Bercow said any motion to approve the withdrawal agreement for a vote should not be substantially the same, and on 27 March, again submitted his warning to the Government. A third meaningful vote on the withdrawal agreement, which does not include a political declaration on future EU-UK relations, was lost by the Government on 29 March 2019. [11] Contemporarily, the UK's withdrawal from the European Union, previously scheduled for March 29, 2019, was postponed to 12 April 2019. Supporters of leaving the EU without a deal suggest prorogation as a method of ensuring such departure; The UK's withdrawal remains a legal default with or without a negotiated withdrawal agreement, and the prorogation of Parliament would prevent legislation from ratifying the treaty, seeking an extension to Brexit negotiations, or revoking the invoke of Article 50 of the Treaty on the European Union. The prorogation would also prevent a motion of no confidence or a motion to trigger an early general election. After persistent rumours of this action, despite Parliament's explicit rejection of the no-deal scenario, opposition MPs took control of the legislative calendar and passed the 2019 EU (Withdrawal) Act, also known as the Cooper-Letwin Bill, which mandates the Government to seek a longer extension to Brexit negotiations. The next deal with the European Council delays Brexit once again until 31 October 2019 and mandates elections to the European Parliament. [11] After the European elections, in which the Conservatives finished fifth behind the Brexit Party, Liberal Democrats, Labour and Green Party, Theresa May announced her intention to resign as prime minister after a new Conservative leader was elected in July. [15] In the interim period, opposition MPs asked whether the new prime minister

would use prerogation to reduce parliamentary scrutiny of Brexit Government, which is not ruled out by the Government. In response, Bercow said from the seat that will not be evacuated from the central stage of the decision-making process on this important issue; he further said such a statement was so clearly blindsided that it was not necessary to state but was disappointed by the fact it needed to be said. [11] Under Boris Johnson Boris Johnson, an outspoken critic of the withdrawal agreement, was elected Conservative leader on 23 July 2019 and became prime minister the following day. [16] As part of his strategy to ensure, do or die, the UK's withdrawal from the European Union on 31 October 2019, Johnson's campaign team and political commentators saw prerogation as a viable method of influencing the policy. [17] On 18 July, Johnson's imminent victory made opposition MPs successful in amending the Northern Ireland Bill (Executive Formation etc) to make prerogation during late October functionally impossible; the bill requires the Government to put the reports before Parliament, which will then sit down to debate them even during the suspension of the body. [18] On 25 July, the newly appointed Leader of the House of Commons, Jacob Rees-Mogg, who also intimidated the possibility of prerogation when he became a backbencher, said the Government viewed prerogation for political purposes as an archaic mechanism that is now his view because collective ministerial responsibility would not be used. [19] During the summer recess, prerogation was still seen as a possible prospect. At the Edinburgh Festival Fringe, Bercow said he would fight with every breath in [his] body to prevent the suspension of Parliament, as he believed Parliament's right to sit and debate was sacrosanct. [20] On 27 August 2019, more than 150 cross-party opposition MPs signed the Declaration of the House of Churches—named after the Headquarters of the Church of England and a former temporary parliamentary chamber near Parliament—and promised to do whatever it took to prevent Parliament from being hung. [21] Opposition MPs also reses the traditional conference season recess; in 2019, the conference season begins with the Liberal Democrat conference, which begins on 14 September, and ends with the close of the Conservative conference on 2 October. [22] Prorogation arrogance blocked Westminster Bridge outside Parliament on 28 August 2019. In the week ending August 24, 2019, it was reported that in the previous 10 days Johnson had asked the attorney general, Geoffrey Cox QC, for legal advice on the prorogation issue, which was tentatively scheduled between the return of Parliament on 3 September and the Meeting of the Council of Europe on 17 October. [23] On 28 August, Jacob Rees-Mogg, in the role of President of the Council, held a small Privy Council meeting with Mark Spencer as Chief Whip, Baroness Evans of Bowes Park as Leader of the House of Lords and Queen while she stayed in Balmoral. [note 4] The Queen gave her consent for prorogation, to begin in the week beginning 9 September, and ending with the State Opening of Parliament on 14 October. [22] Such a long length seen as unprecedented: since 1979, Parliament has not been held for more than three weeks, and is usually held for less than a week, compared to the five-week prerogation requested by the Government. Bercow described the prorogation as a constitutional outrage designed to stop MPs debating Brexit. Opposition politicians expressed their opposition to the prorogation: Scottish First Minister Nicola Sturgeon (SNP) described Johnson as a pot-canned dictator; Welsh First Minister Mark Drakeford (Labour) said Johnson wanted to close the door on democracy; and Liberal Democrat leader Jo Swinson called the prorogation a dangerous and unacceptable act. Government supporters defend prorogation; Conservative leader James Cleverly described the prorogation as something all new administrations do, Us President Donald Trump congratulated Johnson, via Twitter, for preventing a motion of no confidence, and former Northern Ireland First Minister Arlene Foster (DUP) welcomed the prorogation as an opportunity to review and renegotiate the confidence and supply deal her party is doing with the Government. [25] Within hours of the announcement, impromptu protests took place in major cities; demonstrations to stop the coup outside Parliament claimed the presence of several thousand. [26] Losing his working majority following the return of Parliament on 3 September 2019, Conservative MP and no-deal opponent Jolyon Maughan made an emergency motion to introduce a bill seeking to delay Brexit 31 October. The motion will allow backbench control of the timetable for 4 September to pass, in one day, what will be the European Union (Withdrawal) (No. 2) Act 2019. Letwin succeeded because of a rebellion of 21 Conservative MPs who were later suspended from the party; coupled with Phillip Lee's defection to the Liberal Democrats, Johnson lost his majority on his second day in Parliament as prime minister. [27] The government then attempted to filibuster the bill in the House of Lords to prevent the ratification of the bill before prorogation; The government then halted the filibuster and allowed the bill to pass the Lords on September 6,[28] and then received Royal Assent on September 9. MPs applauded Bercow as he set a date for his retirement. After the bill was passed into law, Johnson reaffirmed his commitment to ensuring the UK's withdrawal from the EUROPEAN Union on 31 October; this sparked speculation he could be jailed for contempt of court or stripped of his post for failing to enforce the law. [30] The government also attempted twice to trigger early elections, on 6 September and 9 September; both attempts failed, as opposition parties refused to the motion on that basis would dissolve Parliament and also make it unable to prevent a No-Deal Brexit. [32] On 9 September 2019, the House of Commons voted 311–302 for a simple simple address again to force the Government to hand over, within 48 hours, all communications within the Prime Minister's Office relating to the prorogation as well as publishing all documents relating to the preparation of the no-deal under Operation Yellowhammer. [33] In Westminster Hall, MPs debated two e-petitions: one in favour of prorogation and gathered 100,000 signatures before it closed; and one opposed prorogation and gathered 1.1 million signatures in a few weeks. [34] On the same day, Bercow announced his resignation as Speaker, effective 31 October 2019, amid speculation the Conservatives would break the tradition of not standing against the Speaker at the next general election; His resignation previously triggered the election of a speaker in which the Government would find it difficult to install a friendlier Speaker. [35] Parliamentary Prorogation was ostensibly banned shortly before 2am on 10 September 2019, when Lady Usher of Black Rod, Sarah Clarke, entered the Commons chamber to mark the start of the formal ceremony amid cries of protest from the opposition benches. Bercow, who was then surrounded by opposition MPs holding makeshift signs saying silenced, scoffed at the prorogation intended as an executive fiat act before he left for the House of Lords for the ceremony. When many Conservative MPs followed him out of the chamber, many in the opposition were shocked by the song of shame on you. The ceremony in the Lords was boycotted by opposition peers; this included the leaders of the Labour and Liberal Democrats in the Lords, Baroness Smith of Basildon and Lord Newby, and caused the procedure to be carried out with only three of the Lords Commissioners instead of the usual five. There were only sixteen peers present: thirteen Conservatives, two crossbenchers and one Spiritual Lord. The session closed a few minutes later; On his return to the Commons chamber alone, Bercow was cheered by opposition MPs before he read the prorogation notice, which was later declared void. [36] Lords Commissioners in the prorogation of Lord Newby (Liberal Democrats, boycott) Lord Fowler (Lord Speaker) Baroness Evans of Bowes Park (Leader of the House of Lords, Conservative) Lord Hope of Craighead QC (Crossbench) Baroness Smith of Basildon (Labour, boycotted) Ostensible prorogation was said at the time to have brought an end to the [37] Fifty-two bills having been passed into law; this includes eight Brexit-related bills, six budget bills, and nine bills relating to the collapse of the Northern Ireland Executive in 2017. [37] At the time it was estimated that three bills were brought into the next session, while twelve government bills were not carried away. Famous bills that are said to have been dropped as a result of prorogation include the Trade Bill, which is caused by ping-pong and is not eligible to be carried; Fisheries Bill; Dan related to animal cruelty, divorce, and and The prorogation was supposed to also cancel a meeting between Johnson and members of the Liaison Committee scheduled for September 11. The lower court's ruling During the parliamentary recess in August, a group of 78 MPs, led by SNP justice spokeswoman Joanna Cherry QC MP and Brexit opponent Jolyon Maughan QC, made a judicial review request to the House of Scotland's highest court, the Court of Session in Edinburgh. [note 6] The litigation party seeks a ruling that prorogation to avoid parliamentary scrutiny would be unconstitutional and unlawful; the trial was expedited to September 6. [20] Soon after the announcement of the prorogation on August 28, Cherry applied to the court for a temporary interdictio to prevent prorogation until the case could be heard; [40] On the same day, Gina Miller, who had previously defeated the Government on the use of royal prerogatives in R (Miller) v Secretary of State for Exiting the European Union, made an urgent application for a judicial review of the use of prerogative powers at the High Court for England and Wales in London.[41] and victims' rights activist Raymond McCord made an application at the High Court of Northern Ireland in Belfast for the alleged Good Friday Agreement. [42] On 30 August, Lord Doherty refused a request in the Scottish case for an interdictio because he was not satisfied there was a strong need for one. [43] During a Court of Session hearing on 3 September, the court heard evidence Johnson had agreed to negotiations with the Palace on August 15, 2019, by signing handwritten notes to his special advisers Nikki da Costa and Dominic Cummings, and making comments about a briefing sitting of parliament in September being a rigmarole to show MPs getting their credit. Aiden O'Neill QC, who represented the petitioners at the Court of Session, argued this proved the Government misled the court when they described the issue of prorogation as an academic. [44] During the proceedings, the Government offered no sworn witness statements testifying on the grounds of prorogation; Legal commentator David Allen Green likened the lack of such a statement to Sherlock Holmes' famous quote about a curious incident of a dog at night. [45] On 4 September, Doherty ruled in the first instance that the issue could not be justified; The case was immediately appealed to the House of Session. Doherty's opinion was shared by the High Court, which dismissed Miller's case on September 6 as unjustified. [47] The High Court of Northern Ireland did not rule on the prorogation aspect of the McCord case — as the English and Scottish courts had ruled on the matter—and found other aspects of his cases unjustified on 12 September. [48] On 11 September, a three-judge appeals court The Court of Session, comprising Lords Carloway (Lord President), Brodie, and Drummond Young, unanimously prorogation is unlawful. The court found Johnson was motivated by an inappropriate purpose to set up Parliament and had effectively misled the Queen, and as a result, declared the royal proclamation as null and void. To resolve fundamental differences in rulings from senior English and Scottish courts, both miller and Cherry's cases were submitted to the Supreme Court. [49] Political events during the Scottish referendum were announced, opposition MPs demanded Parliament be immediately recalled that afternoon and some MPs returned to the empty chamber in protest. At the same time, 10 Downing Street reportedly said applicants had chosen a Scottish court for a reason. The statement evoked the headlines of The Enemy of the People newspaper after the government lost the Miller case in 2016, and the subsequent controversy over then Chancellor Liz Truss's failure to maintain judicial independence. [51] In response, incumbent Lord Chancellor Robert Buckland QC—who a few days earlier met Johnson to urge him not to break the article 50 extension law—responded in defence of the judiciary, and the Prime Minister's Office made a subsequent statement defending the impartiality of the judges. [52] That night, Kwasi Kwarteng, a senior minister in government, reopened the controversy on The Andrew Neil Show when he told Neil many people said the judges were biased. [53] Operation Yellowhammer Main article: Operation Yellowhammer The same Night, just before the deadline set by Parliament for the Government to comply with the humble address of 9 September, the Government published a summary of operation Yellowhammer's documents, but refused to publish the full document or release the prorogation correspondence, arguing that doing so would violate the legal right to privacy enjoyed by civil servants. [54] The refusal to conform to a simple, binding address, risked the Government being found in contempt of Parliament for the second time in a year. In the first instance, Parliament voted in December 2018 that legal professional privilege was not a defence of contempt charges. In light of the Government's initial refusal to disclose the full legal advice it received on the withdrawal agreement. [55] The partial release of the Yellowhammer document, which detailed possible disruptions to the supply of food, fuel and medicine as a result of the Brexit no-deal, led to a fresh call from the opposition to Parliament on 12 September to be immediately recalled. [56] At the same time, Johnson was investigated in connection with the Court of Session finding he had misled the Queen; he denied lying to the Queen and said the High Court strengthened his conviction. [57] On the same day, former Conservative attorney general Dominic Grieve QC MP that if the Supreme Court finds the Government has misled the Queen, it would represent a very highly violation of the relationship between the Queen and her prime minister, and Johnson will be forced to very quickly resign as a matter of constitutional principle. [58] On 15 September, the Mail on Sunday reported that Cummings, in meetings with other government special advisers, had suggested a second prorogation if the Supreme Court declared the first prorogation unlawful; The Prime Minister's office confirmed the accuracy of the story and said the comment was clearly made as a joke. On the same day, Plaid Cymru leader Adam Price said Parliament should impeo himself jhson if the Government lost before the Supreme Court and Johnson refused to resign; Liz Saville Roberts, the party's leader in the House of Commons, had said earlier in the week that Johnson should also be impeached if he refused to extend Brexit negotiations and enter discussions with other parties to garner support. [61] Impeachment was arcane's parliamentary procedure which was never successfully levelled at the prime minister or Cabinet minister;[note 7] the last individual impeached was Henry Dundas, 1st Viscount Melville in 1806; and the last serious attempt was a failed 2004 attempt by Price and ten other MPs to impel then prime minister Tony Blair. Johnson, then a member of the opposition frontbench, was another high-profile supporter of the impeachment movement and wrote an opinion piece in The Daily Telegraph that accused Blair of treating Parliament and the public with contempt. [60] Historically, impeached individuals would be arrested and prosecuted by the Commons in a trial before the Lords in Westminster Hall; those who were later found guilty were sentenced to the freedom of the Commons and had no right to receive the prerogative of royal mercy. [62] The Main Article of the Supreme Court, R (Miller) v Prime Minister and Advocate General Chery v for the Scottish Press and anti-prorogation protesters gathered outside the Supreme Court on 17 September 2019 the UK Supreme Court began a three-day hearing to consider an appeal for the London and Edinburgh cases on 17 September 2019; McCord, who did not appeal his ruling, was granted leave to intervene verbally. [63] On the first day of the hearing, which focused on the losers of each lower court case, the Advocate General for Scotland, Lord Keen, argued that the Government was entitled to prorogue Parliament for political purposes and the Court of Session ruled outside its jurisdiction. When asked by the court whether Johnson would prorogue Parliament a second time, Keen did not answer. Lord Pannick QC, who responded on Miller's behalf, argued that there was strong evidence that the purpose of the prorogation was to prevent MPs from frustrating the Government's Brexit plans, as opposed to a brief prorogation to The Queen that the respondent did not quarrel with. [64] The second day focused on victory in each lower court case; low; The government, represented by James Eadie QC, argued that in the absence of legislation governing prorogation powers, it was not appropriate for the judiciary to devise a set of rules to judge prorogation by; O'Neill argued that while it would not be appropriate to make such a rule, the province's court to decide whether the prorogation was constitutional. [65] The last day of the hearing saw intervention from other interested parties: former solicitor general Lord Garnier, who responded to former prime minister John Major, argued the prorogation was motivated by a desire to prevent Parliament from interfering with the prime minister's policies during that period; The Scottish Government, represented by its Lord Advocate, James Wolfe, argued the bulge had a very disturbing effect on Parliament; Advocate McCord Ronan Lawry QC argued the prorogation was designed to run down the clock to force a no-deal Brexit, which in turn would result in controls on the border with Ireland; and in a written submission, the shadow attorney general, Shami Chakrabarti, said that if the powers to prorok were not examined, Parliament would be deprived of the ability to perform its constitutional functions. The trial ended with the Government and the applicants summarizing their arguments: Keen worked the argument that the court was constitutionally not properly equipped to decide high-policy issues; and Pannick asked the court to make a declaration that the prorogation was unlawful and for Parliament to be recalled as a result. [66] On 24 September, the Supreme Court ruled unanimously that the prorogation was justified and unlawful, and therefore null and void. The Court cited the Proclamation Case (1611), in which the High Court asserted its power to test the limits of prerogative powers, in answering questions of justifiidity; in the case of prorogation, the use of the Royal Prerogative shall respect the conventions of parliamentary sovereignty and democratic accountability. The court ruled that any prorogation would be unlawful if it had the effect of frustration or prevented, without reasonable justification, parliament's ability to perform its constitutional functions as a legislature; if this is the case, there is no need to rule on whether the executive motive is halal. [67] The court further ruled that the prorogation of Parliament did have the effect of frustrating the constitutional functioning of Parliament; the court found that the suspension of Parliament as a prelude to fundamental [constitutional] changes to Brexit had an extreme effect on the fundamentals of democracy. The court also found that the Government had not provided justification for the intended prorogation or for its length or effect on the requirements for parliamentary scrutiny of any withdrawal agreement under the terms Union (Withdrawal) Act 2018. As a result, the Court overturned the relevant council Order, meaning the effect of the proclamation of the royal proclamation had the legal effect of a blank piece of paper and returned parliament 2017-19 to trial. [67] Following the Scottish Ruling, several opposition MPs returned to the room as soon as the verdict was issued; MPs who had surrounded Bercow with makeshift signs during the prorogation ceremony took selfies with their signs edited to reflect the verdict. [68] In a statement about College Green—near Parliament and the Supreme Court seat at Middlesex Guildhall—John Bercow announced he had recalled Parliament for a seat the following day from 11.30am. Prime Minister's Questions are not scheduled for regular midday Wednesday slots, but Bercow said he would allow urgent questions and applications for emergency debates to be heard. [69] Bercow opened the first sitting of Parliament, on 25 September 2019, with a statement from the chair: he welcomed MPs back to work and told the House of Representatives that as a result of the Supreme Court ruling, the prorogation ceremonial notes would be abolished from the Journal of the House of Commons and corrected to reflect the House of Representatives as postponed as postponed instead, and that Royal Assent which had been matched to the Houses of Parliament (Restoration and Renewal) Act during the ceremony needed to be re-matched. [70] The first debate item was an urgent question by Cherry to the attorney general; he urged Cox to publish the legal advice he gave Johnson on the subject of prorogation to avoid him being branded a scapegoat for infidelity. Cox defended the suggestion he gave Johnson in good faith, and distanced himself from comments from Conservative MPs attacking judicial independence: in particular, Rees-Mogg's description of the ruling as a constitutional coup. [71] On the day of the verdict, Johnson was in New York City to give a speech before the U.N. General Assembly, tentatively scheduled for the morning of September 25. Johnson said the Government disagreed with the ruling, but would still abide by it and made no attempt to prevent Parliament from meeting the following day. Johnson refused to rule out a second resignation, and also ruled out his resignation. The Prime Minister's office confirmed that Johnson's speech would be forwarded to the evening of the 24th to allow Johnson to fly back to the UK in time to begin a parliamentary sitting the following day. [72] After the verdict, Johnson was criticised by opposition leaders: Jeremy Corbyn, whose Labour Party was at the conference in Brighton at the time, carried his keynote speech in which he invited Johnson to consider his position and become a the shortest minister ever; SNP leader Nicola Sturgeon calls for Johnson Johnson's resignation urging Parliament to put forward a motion of no confidence if he does not resign; Liberal Democrat leader Jo Swinson said Johnson was not fit to be prime minister; and Brexit Party leader Nigel Farage called the prorogation the worst political decision ever and called on Johnson to fire his adviser Dominic Cummings for suggesting the plan. [73] Johnson's first address to Parliament upon his return from New York was on the night of September 25. In his speech, after he expressed his opinion that the Supreme Court misapplied political questions at a time of great national controversy, he again put his call for early elections and offered time on the parliamentary agenda on September 26 for any party that wanted to put a motion of no confidence against him. When asked by MPs whether he would rule out a second prorogation, he refused, and when asked if he would abide by the law mandating him to request an extension to Article 50, he said he would not do so; he has previously described the legislation as a Submission Bill or commonly referred to in the media as the Benn Act. [74] [75] Johnson's speech and behavior were criticized by opposition MPs, who accused his choice of words of inciting threats of violence against politicians. Labour MP Paula Sherriff said MPs routinely received death threats using language such as surrender and treason, and asked Johnson to moderate his language, particularly in the context of jo Cox's June 2016 murder. [76] Johnson encouraged heckles of shame when he responded to Sherriff's comment that he had never heard so much humbug in [his] life. Sherriff's request for moderated language was repeated by Cox's constituency successor, Tracy Brabin; Johnson refused and sparked further outrage when he told Brabin that the best way to honour Cox's memory was to complete Brexit. [77] On 26 September, Bercow made another statement from the chair that he was considering an application by Kenneth Clarke and Harriet Harman — the longest-serving male and female MPs respectively — for the Speaker's Conference to be held to discuss the lack of decoration in contemporary British political culture. Bercow also described the tone of the previous night's debate as the worst he had seen in Parliament since being elected as an MP in 1997. Hours after asking urgent questions about political decorations, Labour MP Jess Phillips told LBC that a man had been arrested for alleged public order offences outside his Birmingham Yardley constituency office; Phillips accused the man of trying to break into the office while accusing him of fascism. [79] In an interview with the BBC, Johnson said he regretted any threat of violence, but his description of the article 50 extension law as a Submission Bill and refused a request to apologize. [80] Later that day, a Government motion for the House of Commons to go into recess during the Conservative Party in Manchester rejected 289–306; the defeat represents the Government's seventh consecutive defeat in the House of Commons and continues Johnson's record of not winning a single division since taking office. As a result, the Government schedules relatively un controversial things for debate during the three days Parliament sits during the conference; this includes a cross-party domestic violence bill, which is scheduled for a session Wednesday 2 October. [81] The lack of conference recess meant that Prime Minister's Questions clashed with the leader's keynote speech at the Conservative conference; Johnson delivered his keynote conference speech while Prime Minister's Questions were deputized by Dominic Raab who faced questions from then Shadow Home Secretary Diane Abbott making him the first black MP to stand at the dispatch box for PMQs.[82][83] On 2 October, the Government announced fresh plans for a six-day Parliamentary prorogue, from Tuesday 8 October to Monday 14 October. Progress on Tuesday means that Johnson will miss Prime Minister's Questions for the third Wednesday in a row; at the time the only question time scheduled since becoming prime minister was on September 4, although Johnson had faced more than eight hours of questions in response to the ad hoc minister's remarks. [84] The second prorogation ceremony took place on the evening of 8 October, and was attended by 30 MPs who followed Black Rod Sarah Clarke from the Commons to the Lords. The ceremony passed without protest which has marked a previous prorogation effort with opposition leaders in the House of Lords also participating in the proceedings. On this occasion, although the Lord Judge was substituted for Lord Hope of Craighead. [86] The 2019 general election and the main Brexit article: The 2019 UK general election and the Brexit negotiations in 2020 The manifesto published by the Conservative Party before the 2019 general election, held in December of that year, states that the newly elected Conservative government will review the wider constitutional relationship between Parliament and the courts, as well as the Prerogative function of the Kingdom itself, the basis on which the prorogation is made. [88] In the election, they won a majority of 80 seats and therefore formed the next government. [89] See also Australia's constitutional crisis 1975 2008–2009 Canadian parliamentary dispute 2010 Canada's 2019 anti-prorogation protest in the UK Brexit negotiations in 2019 Premiership from Boris Johnson Notes ^ Parliament can be recalled during prorogation for other reasons provided in the legislation, such as the death of the Crown (Succession to the Crown Act 1707), if a reserve force is called into service (Reserve Forces Act 1996), or if an emergency force under the Civil Contingency Act 2004 is implemented. (Natzler *camp;amp*; Hutton 2019) ^ The Royal Commission usually of the Lord Speaker, leader of the House of Lords, the seats of the two largest parties do not represented, and convensors of crossbench peers. The Archbishop of Canterbury and the Lord Chancellor are also Lords commissioners, but do not usually participate in Commission business. (Cowie 2019) ^ Other long parliamentary record sessions include: The Parliamentary Convention that followed the Noble Revolution of 1688 (250 days); Parliament 1893–1894, when Gladstone attempted to pass the Second House Regulation Bill (226 days); Parliament 1992–1993, when Parliament debated the Maastricht Treaty (240 days); Parliament 1997–1998, which passed extensive constitutional reform (242 days); and Parliament 2010–12 (295 days). (Hicks 2019) ^ The only other members of the Privy Council (Applicant) v Prime Minister (Respondent) - Supreme Court. www.supremecourt.uk. Retrieved 6 June 2020. Elgot, Jessica (18 June 2019). What is prorogation and why Johnson used it?. The Guardian. ISSN 0261-3077. Retrieved 6 June 2020. ^ Carry-over movement / Bill - Glossary Page. The British Parliament. Retrieved 6 June 2020. ^ Prorogation. The British Parliament. Retrieved 12 September 2019. Marshall, Joe (24 September 2019). A Thriving Parliament. Government Agencies. 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