Scottish court rules Johnson's suspension of parliament unlawful

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Scotland's highest court, the Edinburgh Court of Session, ruled on appeal yesterday that Prime Minister Boris Johnson's proroguing of parliament for five weeks was unlawful.

Parliament was undemocratically suspended on Monday evening, after Conservative Party leader Johnson advised the queen the previous week to authorise it. Johnson moved to prevent opposition MPs from taking control of Parliament's order paper over the next five weeks and derailing his plans to withdraw the UK from the European Union (EU) on October 31, without a deal if necessary.

In a highly politicised judgement, a panel of three judges in Edinburgh ruled that Johnson was "motivated by the improper purpose of stymying parliament." It added, "The circumstances in which the advice was proffered [to the queen] and the content of the documents produced [by the UK government] demonstrated that this was the true reason for the prorogation."

The ruling concluded, "The Court will accordingly make an Order declaring that the prime minister's advice to HM [Her Majesty] the Queen and the prorogation which followed thereon was unlawful and is thus null and of no effect."

The court case on the legality of proroguing parliament was brought by 75 anti-Brexit MPs and peers, led by the Scottish National Party's Joanna Cherry. In the first hearing at the Court of Session last week, Judge Lord Doherty ruled that Johnson had not broken the law by proroguing Parliament and said that it was down to MPs and the electorate to judge the prime minister's actions rather than the courts. This was appealed by the claimants, resulting in Wednesday's ruling.

The government immediately appealed the decision, which will be heard at a three-day session of the Supreme Court beginning next Tuesday.

While some pro-EU MPs interpreted the Scottish ruling to mean that parliament must be recalled—with around 30 descending on Westminster to demand it—the top judge involved in the Edinburgh ruling, Lord Carloway, said the court would not make any "ancillary orders"—forcing the recall of MPs—before the Supreme Court hears the case.

In an indication of the polarisation between the contending factions of the ruling elite over Brexit, the Supreme Court will rule on the Scottish verdict as well as one from the High Court in London—which threw out another case by Remain campaigners trying to overturn the suspension of parliament.

The case was brought by the pro-EU multimillionaire investment manager Gina Miller. In 2017, Miller successfully took legal action against attempts by Johnson's predecessor, Theresa May, to trigger Brexit without a parliamentary vote. Miller was publicly backed in bringing the latest High Court case by remainers, including former Conservative prime minister John Major, Liberal Democrat leader Jo Swinson and Labour Party deputy leader Tom Watson.

Last Friday, three High Court judges headed by Lord Chief Justice Ian Burnett ruled against Miller. Within minutes of the Scottish ruling being made public yesterday, the London court handed down its reasoning. It declared that Johnson's decision was "inherently political in nature and there are no legal standards against which to judge their legitimacy." Paragraph 1 of the ruling was unequivocal, with the judges declaring, "We concluded that the decision of the Prime Minister was not justiciable. It is not a matter for the courts."

Paragraph 43 states, "The refusal of the courts to

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review political questions is well-established."

In Paragraph 55, after listing four other occasions when parliament was prorogued for "lengthy" periods, it states, "Those facts also highlight that Parliament may be prorogued for various reasons. There is no statute, other law or any convention which requires Parliament to sit in constant session. The purpose of prorogation is not limited to preparing for the Queen's Speech."

Backing Johnson, it continues, "Prorogation has been used by the Government to gain a legislative and so political advantage. One of the most notable examples of that was its use [by the post-war Labour government of Clement Atlee] to facilitate the speedy passage of what became the Parliament Act 1949." The paragraph concludes, "Accordingly, even if the prorogation under consideration in the present case was, as the claimant and the interveners contend, designed to advance the Government's political agenda regarding withdrawal from the European Union rather than preparations for the Queen's Speech, that is not territory in which a court can enter with judicial review."

The diametrically opposed verdicts from the Edinburgh and London courts were echoed in the responses of the pro- and anti-Brexit media who leapt to support one and oppose the other. One human rights author headlined a blog, "A Tale of Two Judgments."

Also being heard during the Supreme Court three-day deliberation is a third judicial challenge to Johnson. The case is currently before Belfast's High Court that will make a ruling today. It was brought by Raymond McCord, a victim rights campaigner whose son was killed by the loyalist Ulster Volunteer Force, and who opposes the UK leaving the EU. He contends that the prorogation breaches the 1997 Good Friday Agreement that ended the 30-year armed struggle against British imperialism waged by the Irish Republican Army that resulted in the setting up of a frictionless border with the Republic of Ireland.

The Remain parliamentarians brought their legal case in Edinburgh first because Scotland voted by a nearly two thirds majority (62.0 percent) to remain in the EU in the 2016 referendum. This compares to England that voted by a majority of 53.4 percent to leave. The declared aim of the ruling Scottish National Party, which backed the Edinburgh case, is for Scotland to be independent of the UK but to remain within the EU.

Within England dominant sections of the ruling elite are pro-Remain, but many were hesitant to involve the courts and the monarchy in an escalating constitutional crisis.

Downing Street felt confident that the Supreme Court will rule in favour of the High Court and said the government would abide by its decision. If the court rules against prorogation, therefore, Parliament will be reconvened.

Only a few dozen remain-supporting opposition MPs, led by Liberal Democrats leader Jo Swinson, assembled yesterday outside parliament demanding it was reopened. A spokesperson for the pro-Remain Speaker of the House of Commons, John Bercow--who on Monday denounced Johnson's prorogation as "an act of executive fiat,"--insisted after the Edinburgh ruling, "Any decision to accelerate the meeting of Parliament during prorogation is a matter for the government."

Labour leader Jeremy Corbyn said only, "These are interesting times when courts rule in favour of democracy and against a prime minister who wants to shut down democracy." Once again Corbyn tailors his actions in order to be seen as a stabilising presence by the ruling class and to exclude any action that might lead to an independent intervention by the working class.

However, nothing is certain in the febrile political climate produced by the Brexit crisis.

Were the Supreme Court to back the Edinburgh judges and oppose Johnson's prorogation, this would have extraordinary ramifications and possibly represent a fatal blow for Johnson. Not only would his no-deal Brexit plans be imperilled, but his days as prime minister would be numbered.

The author recommends:

Johnson's proroguing of Parliament: The British ruling class declares war on democratic rights
[30 August 2019]

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