

In Contempt of Britain's Parliament: The Legal Advice of Brexit

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It is attrition, suffocation and contortion. While Theresa May's Brexit program, weak, compromising and cobbled as it is, endures that bit longer, her opponents from within and without government have been essentially undercutting her on various fronts.

Foppish and solutions-free Boris Johnson does so from the perspective that the May program as it has been agreed to with the EU so far is a case of Britannia surrendering to the wickedness of the Continent. He prefers, according to Sir Roger Gale, "the grievance to the solution".

In the Commons, Johnson persisted with his motif of imprisonment and punishment for the sceptred isle: that the bureaucrats across the channel were cooking up a terrible fate for Britain were the backstop not to be removed from any arrangement.

"They will keep us in permanent captivity as a *momento mori*, as a reminder to the world of what happens to all those who try to leave the EU."

Britain would be hostage to Spanish claims on Gibraltar, the French purloining of its fish and bankers, and German pressing for concessions on the free movement of EU nationals.

Opposition parties assail the prime minister from the perspective that the entire campaign for Brexit, and government behaviour since, has been a tissue of irresponsibility and lying. They are often not sure which, but they are chancing it. Labour's Jeremy Corbyn is, however, playing a double game. Being himself sympathetic with the Leavers, he can only, as of this time, trash the Chequers proposals with indignant scrutiny. Before his fellow parliamentarians, Corbyn insisted that May's plan would cause a severe case of economic shrinkage: some 4 percent, precipitating the loss of £100 billion over the course of fifteen years.

What exercised the House of Commons on this occasion most, however, was a historical incident of singular rarity. Members from Labour and the DUP were permitted by Speaker John Bercow to submit an emergency motion to find the government in contempt. The motion carried.

The May government had not done itself any favours in that regard, equipping opponents with the bombs to duly situate under their chairs. As if channelling her former self as home minister, the secretive May refused to release the full legal advice behind the Brexit deal that may yet be doomed. A circulating rumour (for much, in these shadows, remains rumour), is the fear that the backstop might keep Northern Ireland in the EU customs union

indefinitely.

The government defence proved to be stock standard and would, in most instances, have worked: to release such a report would expose vulnerabilities in negotiating positions ahead of further talks with the EU, thereby rewarding the very individuals deemed enemies by many in parliament. Besides, [argued](#) transport secretary Chris Grayling, himself a former lord chancellor, it remained “a central part of the principles of our legal system that the advice provided from a lawyer to their client is treated as confidential.”

Such is the dire, panicked state of British politics at the moment than even old principles of legal propriety, including that of professional privilege, should be seen to be broken in the higher national interest. Parliament, as the people’s arbiter, must be informed, and not releasing the attorney general’s legal advice failed to comply, according to the parties behind the contempt motion, with the Commons resolution of November 13. That resolution stemmed from the principle that legal advice on the Brexit deal would be published in its entirety.

Attempt to placate opponents were duly made. The first was the release by the government of [an overview](#) on Monday covering the gist of the attorney general’s legal advice. Then came the appearance of Attorney General Geoffrey Cox in the Chamber. He expressed a willingness to answer questions put to him, but this proved a minor sedative to the proceedings. A three-line whip, deployed by Conservative MPs in an effort to shield the government, also failed.

Cox’s [responses](#) conceded various government weaknesses in their negotiations with the EU. He would have preferred, for instance, “a unilateral right of termination” over the Northern Ireland backstop. Additionally, he would have also liked to see “a clause that would have allowed us to exit if negotiations had irretrievably broken down.” But such frankness was to no avail, and Andrea Leadsom, the Commons leader, was compelled to accede to the wishes of the opponents, with the full advice set to be published on Wednesday.

Contempt matters are ancient things, the sort referred to a privileges committee. But the focus here will be less seeking sanction against any relevant minister, including Cox, than the vote on December 11 in a house that is already faltering. The government, surmised shadow Brexit secretary Keir Starmer, “has lost its majority and the respect of the house”. At this point, the deal in this form will be scuppered, leaving a drawing board bereft of options. Those filling the void will do so with a formula so repetitive it has become traditional: extol the scenario of total collapse, or embrace the fiction a world outside Europe that can act as appropriate replacement for British trade and power.

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