

## Process of discovery

### **What Brexit has taught us so far: with Parliament standing prorogued, the Commons Speaker gives a robust defence of Parliament's role as a check on executive 'malpractice' and pledges all the 'procedural creativity' necessary.**

On 12 September 2019, John Bercow MP, the Speaker of the House of Commons, delivered the [Annual Bingham Lecture](#), entitled 'Process of Discovery: what Brexit has taught us (so far) about Parliament, Politics and the UK Constitution' to a packed Middle Temple Hall.

With Parliament standing prorogued following a week of intense political drama, the Speaker's lecture highlighted the centrality of Parliament's role in upholding the Rule of Law in the UK. At a moment when the political crisis caused by Brexit appears to be at risk of causing fundamental damage to parliamentary democracy in the UK, it was reassuring to hear the holder of one of the most important political offices in the UK offer a robust and thoughtful defence of the Rule of Law and Parliament's role as a check on executive power. However, the substance of the Speaker's lecture which set out three main arguments, highlighted the profound nature the challenges facing constitutional democracy in the UK.

The Speaker's first argument was ostensibly a positive one: Parliament's ability to shape the Brexit process is not the product of the unique circumstances of Brexit, but rather part of more deep-rooted revitalisation of the House of Commons has been under way since 2009. The Speaker cited a number of valid examples to support this claim, including the use of Urgent Questions and the work of select committees.

However, the Speaker also noted that his greatest regret was that the Commons had not found a way of creating a House Business Committee to enable MPs, rather than the government, to control parliamentary time. The recent intense battle for control of the Order Paper in the Commons has highlighted the consequences of this inaction. Successive governments have ignored calls to take steps that could empower the legislature. It is hard to imagine how a consensus on parliamentary reform could be reached in the near future.

The Speaker's second argument was that as a result of the enactment of the EU (Withdrawal) (No 6) Act 2019 (the 'Benn Act') in September, there are now only three legitimate parliamentary options for the Brexit process before 31 October: MPs approving a new Brexit deal; MPs approving leaving the EU without a deal; or the government securing an extension in line with the terms of the Benn Act. The Speaker rejected in stark terms the notion that the government might be able to justify ignoring the legislative requirement to seek an extension: 'we should not be in this linguistic territory'. He then outlined that if we did enter such territory, then he would ensure that all the 'procedural creativity' necessary would be deployed to ensure that any Brexit outcome was expressly endorsed by a majority of MPs. This warning reaffirmed the Speaker's interpretive approach: the detailed rules of parliamentary procedure should be always be read as being subject to the implied qualification that their overriding purpose is to enable MPs to decide on the most political questions of the moment.

The Speaker's third argument was that the case for a codified constitution or a 'Parliamentary Power Act' should be seriously looked at in the light of the present political context. The case for such codification would be, he argued, in order to entrench and

protect both the authority of the House of Commons and the Rule of Law from 'executive malpractice'. Constitutional flexibility creates an inherent risk, borne out by recent events, that a Government could avoid checks and balances that get in the way of delivering its political agenda. Like many other public lawyers, I share the Speaker's hope that the Brexit crisis could lead to positive constitutional change. However, the political reality is that consensual constitutional change is the one outcome that MPs are unlikely to endorse any time soon.

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*Dr Jack Simson Caird is Senior Research Fellow in Parliaments and the Rule of Law at the Bingham Centre for the Rule of Law. From 2015 to 2018, Jack was a researcher in the Commons Library.*

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