

Super Saturday - Did I miss something?

Remainers in the House of Commons were forced to come up quickly with a new way of stopping Brexit after Boris Johnson surprised them by returning from Brussels with a deal. His new version of Theresa May's Withdrawal Agreement threatened to find the support of a majority of the House of Commons on Saturday.

What happened on Saturday?

The government's intention at the beginning of Saturday was to hold a straightforward vote on Johnson's deal. But its plans were ruined when parliament passed an amendment written by former Conservative Minister Oliver Letwin, who is committed to preventing a No Deal Brexit.

In one of my recent commentaries I expressed my surprise at the decision of the remainers to write a time of 2300 hours on the 19. October in to the Benn-Letwin law as a deadline before which Boris Johnson would have to write a letter to Brussels. This was only one day after the conclusion of the European Council meeting, which suggests that the Remainers assumed that Boris would be unable to negotiate a new deal by the 19th October, and that forcing the extension would be a mere formality.

If that was the case, then they must have been shocked to realise that they had made a major tactical error. The first thing to be noted is that the deal must have had a good chance of being passed on Saturday, otherwise the Remainers would have allowed Boris to lay it before Parliament for what is called a meaningful vote and defeated it.

The remainers clearly judged that that was a risk they could not afford to take. They were therefore forced to find a way of avoiding a vote or rendering a vote null and void before the evening was out. Their own unnecessarily narrow deadline placed them in what chess players call Zugzwang, for after 11 pm Boris Johnson's threat of a No Deal Brexit, bluff or not, would have been reactivated.

Luckily Oliver Letwin is a very clever lawyer and came up with a cunning plan. He added an amendment which says (and I am quoting the pro-EU Guardian here) that "parliament will withhold approval of the prime minister's deal until the withdrawal bill implementing Brexit has been passed". In other words the government must introduce and pass the national laws which are necessary to implement the Withdrawal Agreement before Parliament will make a decision as to whether it supports the international Agreement authorizing withdrawal.

Now I must admit, I am not sure I have understood this gambit correctly, because its effects seem so absurd, but if the Guardian's description is correct, then Oliver Letwin has proposed that the House of Commons, a majority of whose members are in their own minds opposed to Brexit, should pretend that Brexit has happened and pass the UK legislation necessary to implement it in the week after the 19th of October in order to ensure that the UK's membership of the EU is extended until the 31st January 2020. Once those two things have been achieved, the House of Commons will proceed to a vote on the Withdrawal agreement with the aim of defeating it in order to prevent Britain leaving the EU.

The government's intention at the beginning of Saturday was to hold a straightforward vote on Johnson's deal. However the Letwin amendment was passed which put a stop to that. The government then declined to hold a meaningful vote on the bill.

There are a number of things to be said about this state of affairs.

Firstly, the Letwin amendment passed by only 322 to 306 votes, the smallest margin against a Withdrawal Agreement up to now. When one considers that the coalition partner of the Conservatives, the 10 Democratic Unionist MPs, voted against the government, it becomes clear that the Remainers were right to fear that the government would win a meaningful vote on the agreement itself.

Secondly, this manoeuvre smacks of sheer desperation on the part of the remainers. Their options are rapidly shrinking. They dare not hold a general election, they dare not vote on the Withdrawal agreement, and they are apparently so disunited as to be incapable of passing a vote of no confidence in the government.

Possible options to prevent Brexit

They have, as I see it, the remainers have only three options left to choose from.

1. To revoke Article 50. This would be a constitutional outrage bearing in mind that the UK government introduced referenda into the UK constitution back in the 1990s as votes which bind the government to a general principle that government policy must implement.
2. They can rely on the speaker, who now seems to have dropped any pretence at being neutral in the matter of Brexit. He cited a precedent from the 17th century to prevent Theresa May putting her deal before parliament for a third time. This precedent states that a government may not repeatedly place legislation that has been decided before the House of Commons in the hope of getting a different result.

(One cannot avoid drawing attention to the double standard demonstrated by those who support the Speaker's actions in this regard and simultaneously demand a re-run of the 2016 referendum with the express intention of getting a different result).

I say that the speaker is not neutral because he has (with the silent approval of parliament) extended his powers and broken precedent in the last two years where it has suited him. He could quite easily break with this 17th century precedent if he wanted to.

As it is, the Speaker Bercow has argued that because the government introduced the bill on Saturday and because it was successfully amended, he will not permit them to reintroduce it again. Presumably if further amendments to the bill are proposed, then Bercow will allow a vote upon them, otherwise we will find ourselves in a situation where one man can prevent an international agreement from being ratified.

This raises a further question. Johnson signed the deal with the EU leaders on Friday. If Parliament amends the terms of the agreement unilaterally, does that not render it invalid?

The government tried to get around this potential obstacle by not asking for a formal vote on the bill itself on Saturday and announcing that it would introduce the bill again this week, after the

letters had been sent to Brussels.

However Bercow ruled on Monday 21.10.2019 that the preceding vote on the amendment meant that the bill in its present form had already been put before Parliament and that he would not give Parliament a second chance to vote on it.

If you think that these procedural tricks are beyond comprehension, then you are right. It took me an hour to research enough to write the above and even now I am not sure it is correct. But that I suspect is one of the main aims of this humpty dumpty approach to legislation.

However this blocking tactic, this reliance on the speaker preventing a vote on the most important piece of legislation before the House at this moment, is surely not one that can be maintained indefinitely.

3. The third option seems to me to be the most promising.

It is surely possible for a parliament which has debated Brexit for three years without producing any results to spend the next 8 weeks leading up to the Christmas holiday endlessly debating, changing and obstructing the legislation which the Letwin amendment presumably now forces the government to introduce. Extend and pretend, as the Americans say. That will postpone Brexit until January with ease.

The consequences of this stalemate for Britain's relationship with the EU

Perhaps the most astonishing thing about this whole business is that parliament has handed over the power to decide how Brexit should proceed to the EU. Not only does it not want the British government to make a decision, but more surprisingly the UK parliament now no longer seems to make one either. Perhaps this an unavoidable conclusion you must arrive at, if you believe, as most remainers do, that maintaining the supremacy of EU law over British law is necessary to save British democracy. After all the protocol Nr 2 of the Lisbon treaty describing the position of national governments with regard to EU law makes it clear that they have no legislative powers, merely the right to be informed.

The ball is now entirely in the EU's court. If the EU refuses to grant an extension, then the House of Commons will be forced to decide between a No Deal Brexit and Johnson's deal. The remainers want neither option.

If the EU extends Article 50, then Britain will remain in the EU unless the Withdrawal Agreement is passed. Although the Benn-Letwin Act stipulates an extension until the 31.01.2020, the UK Parliament cannot impose this on the EU. The EU can surely make its own decision on how long the extension should be, without any regard to what Britain wants or needs.

As a result of the remainers' obsession with preventing Brexit, the power to make this important decision deciding Britain's future has passed out of parliament's hands into the hands of the EU. The EU could in theory even unilaterally withdraw its assent to Boris' deal and dictate terms to the British Parliament, backed up by a threat to push Britain into a No Deal Brexit at a date of the EU's choosing if they are not met, Not a very likely scenario, one hopes, but what a position for Britain to find itself in, 30 years after the fall of communism and the re-unification of Germany. Whatever the short-term consequences of a No Deal Brexit might be, they surely could not put Britain in a weaker position than this.

My personal opinion is that the Remainer MPs in the British House of Commons have turned the British political class into a laughing stock on the European mainland. The remainers seem unaware of this. I fear the European amusement soon will turn to genuine annoyance, as they realize that they are not dealing with an eccentric re-run of the Popular Front for the Liberation of Palestine scene out of *The Life of Brian*, but with people who are rendering their own political system dysfunctional and who no longer behave in ways that are predictable or reliable. It would be a disaster for Britain if the EU's attitude to the UK changed from one of patient engagement to one of mistrust and exclusion.

With their indefatigable attempts to create a Brexit in Name Only, Britain's elite is damaging and dismantling its once substantial reputation, not only abroad but also (perhaps even more worryingly) at home. It is surely time for them to pursue a solution that stabilizes both Britain's constitutional order and its relations with its European neighbours.

Nigel Farage is doubtless right that Boris' deal is not a clear and intellectually satisfying solution to the problems posed by Brexit.

But at a time when the sloganizing of street protesters is starting to colour the tone and standard of the debates in the House of Commons and tactical manoeuvring has replaced serious discussion of the issues, Johnson's deal at least provides the time and a framework within which Britain's institutions can pursue a serious debate over the future of the UK. A second referendum campaign by contrast threatens to add even more fuel to the fire of street protest and national division.