

# Brexit political efforts too little, too late and too limited

The necessary British momentum and resolve required to lock down political agreement remains maddeningly elusive

## BREXIT

Mary C  
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a case – in front of 11 justices – challenging prime minister Boris Johnson's right to prorogue parliament. It included a remarkable intervention by lawyers for the former Conservative Party prime minister John Major disagreeing with and challenging the authority of Johnson.

In a judgment expected this week, the court will first determine if they have the power to intervene in the dispute about the prorogation of parliament, and secondly, whether Johnson acted unlawfully.

This is a truly historic case. It is testing Britain's unwritten constitution and seeks to determine the scope of British parliamentary sovereignty. Depending on the judgment, Britain may be plunged further into a profound crisis pitting government against parliament, and played out against the backdrop of an increasingly toxic atmosphere in Westminster and on the streets outside.

Despite its evident importance, however, the supreme court case represents a distinctly British constitutional and political crisis which is largely removed from the wider Brexit crisis. It is Britain's unwritten constitution, and not Brexit, that is in the dock.

The outcome of the supreme court case will have consequences for Britain's constitutional

order and the British body politic. From a Brexit perspective, the legal proceedings are something of a distraction.

The practical impact of the ruling on the Brexit impasse will be less substantial. In fact, a ruling either for or against the British government is unlikely to have a strong material impact on how Brexit unfolds during the weeks leading up to October 31.

This is because it is the British government (rather than Westminster) which leads the Brexit negotiations with the European Commission. As events in the Supreme Court proceeded, Johnson met with European Commission president Jean-Claude Juncker and prime minister Xavier Bettel in Luxembourg.

Johnson's decision to skip a press conference might have dominated the newsfeed, but the soundings after those meetings, particularly from Juncker, hinted at some possible advances.

The European Commission president insisted that a deal was possible and conceded that he has no "emotional attachment" to the backstop. However, he nevertheless remains committed to its objectives.

In effect, he was hinting at the possibility of a backstop by another route and with another name. Minister for Foreign Affairs Simon Coveney repeated a similar view, confirming that Ireland is not wedded to the backstop but, like Juncker, is insistent that any alternative to the backstop must achieve the same outcome.

DUP leader Arlene Foster's speech to the Dublin Chamber of Commerce was also noteworthy last week. In that speech, she said: "We [the DUP] are prepared to be flexible and

look at Northern Ireland-specific solutions." However, the party is not open to either a Britain-wide or a Northern-specific backstop and will only countenance special arrangements for the North if they enjoy the consent of both communities. The DUP's flexibility has its limits.

The week concluded with the British government sharing a series of 'confidential technical non-papers' which do not represent a formal position but provide indications as to British thinking on the terms of a possible deal.

The contents are unclear, but signs are that the proposals fall well short of what might be acceptable to the EU in terms of its insistence on protecting the integrity of the single market

proposals are limited in scope, and promises are legally hollow tools as far as Brussels is concerned.

On Friday, RTÉ reported that Britain wants a selective approach to an all-Ireland agricultural zone, which would mean only sporadic alignment of EU rules North and South. British negotiators have also confirmed during talks in Brussels that they want the North to remain within UK, and not EU rules, when it comes to customs and industrial goods. EU officials have expressed dismay.

There is still some considerable political distance to be travelled, but it seems the necessary British momentum and resolve needed to lock down political agreement remains elusive.

Time – or rather, the lack of time – is now the enemy. Having categorically ruled out requesting an extension beyond October 31, Johnson must agree a deal or risk further political instability.

A pending Brexit deadline might focus minds, but it is difficult to escape the hard truth that months and years have been squandered as Britain continues to wrestle primarily with its own divided polity and society. Last week's legal drama is the latest manifestation of that British condition.

The judicial proceedings might be peripheral to the detail of a political deal, but they hint at why progress to date has been too little, too late and too limited.

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and preventing a hard border on the island of Ireland.

Last week's intensification of political efforts to break the Brexit impasse is welcome, but wide gaps are still glaringly apparent between the British government and the EU. With just over a month to go until October 31, British

# 'Factfulness' is the antidote to Trump and Johnson

The best way to fight populism is to turn down the drama and take a fresh look at reality

## POLITICS

Colin  
Murphy



The mainstream media blames many factors for the rise of populism: social media; fake news; Russian trolls; Russian hacks; Cambridge Analytica; displacement of blue-collar workers by automation and by China; rising inequality,

the Great Recession, austerity; the gullibility of poor people; and racism. But one of the chief culprits goes largely unexamined: itself.

Donald Trump promised to "drain the swamp". Boris Johnson is reportedly planning an election campaign on the agenda of "the parliament versus the people". This is classic populism – the appeal directly to "the people" at the expense of the entrenched "elites".

Both Trump and Johnson established themselves first essentially as entertainers. When they entered politics, that celebrity seduced the news media; Trump and Johnson excelled at exploiting it to turn politics into entertainment.

Trump has called CNN "the enemy of the people", but he is essentially a creature of the network. He was cast in *The Apprentice* on NBC by Jeff Zucker; when Zucker became president of the flagging news channel, CNN, in 2013, he turned to Trump to boost its ratings – but this time relying on Trump as subject, not anchor. "I understood that he was just a one-man wrecking-publicity machine", Zucker has said. With Trump as the star, CNN modelled its campaign coverage on its sports coverage. In the election year of 2016, the channel had its highest ratings ever.

Across all the networks, Trump's coverage dwarfed that of his opponents. He got four times as many mentions as Clinton during the presidential campaign, according to the 2016 Campaign Television Tracker. The media tracking firm mediaQuant calculated that he had the equivalent of \$5.6 billion of free advertising during his campaign. His coverage was disproportionately negative – but when politics is entertainment, no publicity is bad publicity.

Trump continues to dominate the American news media in a manner unlike any president before him. On the New York Times home page on Thursday, he was named in six headlines; on the Washington Post home page – which is busier – he was named in 19. On the same date in 2015, at the same point in the election cycle, Obama was named in just one headline on the Times home page. Trump uses Twitter brilliantly to rouse his base and rile his opponents; but its primary effect is to drive ever more attention to him in the traditional media, which has greater impact.

Johnson's career, too, has been symbiotic with the media. As Brussels correspondent for the Daily Telegraph, he was encouraged in an iconoclastic style of reporting-as-entertainment by his then editor, Max Hastings – despite Hastings being pro-EU. Johnson's reportage "undoubtedly fuelled Euroscepticism", Hastings wrote recently, but he was "a peerless entertainer".

This is not a counsel of despair. The media has not dumbed down or sold out or given up; it is doing what it has always done. Our brains are wired to process information in the

form of stories, and this inclines us to what the Swedish social scientist Hans Rosling called the "overdramatic worldview".

The media functions by delivering on our desire for storytelling – for drama. This reflects various instincts deeply encoded by evolution, among them a "negativity instinct", whereby we notice the bad more than the good, and a "fear instinct", where we react more to things that make us afraid, such as terrorism, than things that are statistically more dangerous, such as driving, or air pollution.

Trump is the world's greatest manipulator of these instincts, shaping the news media to his own agenda; in turn, his liberal critics fall back upon the same instincts, creating a feedback loop that serves to keep Trump in the news and amplify his message.

But if this is how the media works – and how our brains work – can we do anything about it? Rosling's antidote is "factfulness" – a kind of mindfulness for the news junkie. Both as journalists and as consumers of the news, we need to slow down and calm down. When reporting on, or reacting to, the excesses of populists, provocateurs or politician-entertainers, we need to consider whether our response will simply amplify their provocation.

In some cases, offensive tweets by political figures, commentators or conspiracy theorists are responded to by the subjects. The replies are often deft and elegant and get multiple retweets, but who is this a victory

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for? The person who purposely set out to spread an offensive message can benefit from an increased reach.

The former journalist Gemma O'Doherty campaigned in the presidential election on an anti-corruption agenda that was broadly populist, but has since widened her attack on "the system" to encompass conspiracy theories and scaremongering about immigration. On September 7, she sent a tweet in response to a Lidl ad that featured a multiracial family. Her tweet was retweeted 91 times (according to an archived copy; the tweet has since been removed by Twitter). Lidl's rebuttal on Twitter, which was deft and elegant, was retweeted 2,000 times – inevitably increasing O'Doherty's reach. Was that a victory for Lidl or for O'Doherty?

This may seem counter-intuitive. The fight against populism demands action, now. Retweets. Comments. Petitions. Protests. Marches. All these things may indeed be necessary – but the first step may be to pause.

"Uncontrolled, our appetite for the dramatic goes too far, prevents us from seeing the world as it is, and leads us terribly astray," writes Rosling.

Our appetite for the dramatic helped create Trump and Johnson, and then brought them to power. The populists have a great structural advantage in this new media age: speed. The always-on nature of the news cycle now exacerbates the overdramatic worldview. "We need to learn to control our drama intake," writes Rosling. The most powerful tool may be the simplest: to slow down.

# Dealing from bottom of the deck on the Public Services Card

The government is clinging to its legal advice on the PSC data fiasco. It needs to admit it was wrong and change course immediately

## DATA PROTECTION

Eoin  
O'Dell



Last Friday, the Convention Centre in Dublin was heaving with the great and the good of the international tech industry. It was the location for the government's Digital Summit. Opening the event, Taoiseach Leo Varadkar extolled the virtues of the digital revolution. In the first keynote, Kent Walker, a vice-president at Google, commended what he called the government's tremendous leadership on digital policy. And, at a full plenary panel, international experts debated the future of data protection.

But there was a ghost at the banquet. It was the government's response to the report, published last week, in which the Data Protection Commission (DPC) found that the government's implementation of the Public Services Card (PSC) infringed data protection legislation.

Rather than accepting that it was a fair cop, the government has refused to comply with the commissioner's findings. Worse, it has doubled down, asserting that it has robust legal advice in support of its position. Indeed, it has gone so far as to claim that it would be unlawful for the department to reduce the use of the PSC in line with the DPC's recommendations.

This approach is indefensible. No doubt it has that legal advice. But that is all it is – advice. The department doesn't have to follow it. And it shouldn't. Instead, it should accept that most of the current purported uses for the PSC do not have a valid legal basis. The DPC's report is very clear; its fundamental conclusions will undoubtedly survive legal challenge; and the government will eventually be taken to task in the courts in Dublin and Luxembourg as surely as it has been all week in the court of public opinion.

The government's misguided approach has the capacity to do great damage to Ireland's reputation as a good location for international tech companies to establish their European headquarters. A government in such open conflict with the DPC can have no credibility in seeking to ensure that such companies comply with the commissioner's decisions. Worse, it risks fostering the view that a company unhappy with an unfavourable DPC decision could seek government help to resist that decision.

There had, for a while, been a perception that a small, under-resourced DPC was the US



Helen Dixon, the Data Protection Commissioner: her report will surely survive a legal challenge  
Fergal Phillips

tech giants' favourite EU regulator. That has changed: the commission moved into new Dublin headquarters in 2017; its annual budget has grown from €1.9 million in 2014 to €15.2 million. Over the same period, its staff numbers have grown from 31 to 180. More is required; but enough had been done to demonstrate the government's ongoing commitment to the proper enforcement of data protection law. Now all that good work is at grave risk.

And for what? Some short-term political gain from kicking this particular can down the road? If so, it is a very short-sighted calculation.

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tion. The government seems to think that the fact that it has already spent €60 million on the PSC justifies its intransigence. But doing so will not just throw good money after bad, it will also inevitably incur additional data protection liabilities, and further imperil our international reputation for credible tech and data regulation.

This is not the first time that government departments have run afoul of data protection laws. In 2011, the commission found that blood

samples from babies' heel-prick tests were being unlawfully retained, but in 2013 the Minister for Health ordered the HSE not to comply with the commission's determination. The Department of Education has continued with its controversial plans, unveiled in 2014, to collect extensive profiles of all children in education and store that data until they turn 30, notwithstanding the commission's misgivings.

Nor is this the first time that the Department for Employment Affairs and Social Protection, which is responsible for the PSC, has run afoul of data protection laws. In another recent case, the DPC found that the department had breached data protection law in its processing of child benefit data; and the department is challenging that decision in court. Separately, the DPC is investigating whether that department infringed upon the statutorily independent role of its data protection officer.

There is a fundamental cultural problem in such departments; and, rather than ignoring it, defending it, or encouraging it, the government needs to acknowledge the problem and seek to solve it. It must get its own house in order in this way if it is to be able, with credibility, to face down tech companies unhappy with DPC decisions.

At the Digital Summit last Friday, Jules Polonetsky, chief executive of the Future of Privacy Forum, a Washington, DC-based NGO, commended the DPC for standing up to the government on the PSC issue. It is plainly a good thing that the commission is demonstrating its independence in this way. But it is not a good thing that it has had to do so. And it is plainly a bad thing that the government is showing it such disrespect.

This is not good for the reputation of Ireland Inc. The sooner the government realises this and takes a different tack, the better.

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