Protest in Westminster, August 28

Prorogation gallery

Historical examples of Parliament being suspended

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The announcement by Boris Johnson’s government of a decision to prorogue Parliament in September is the latest political event to have exposed the byzantine workings of the British constitution to an unprecedented level of public scrutiny. Over the past year, the Covid-19 conventions and rules governing parliamentary procedure, in particular, have assumed an unexpected significance in the political drama at Westminster. From MPs deserting arcane practices such as making a “humble address” to the queen or darning their stockings to the Speaker’s refusal to allow the same question to be put by ministers on grounds of ancient precedent, the role of the historic past in shaping the political present has never, perhaps, been more apparent.

One result of this has been a stampede by journalists, commentators and campaigners for copies of Erskine May — the bible-sized “treatise” on “the law, privileges, proceedings and usage of Parliament”. First published by the pioneering clerk of the Commons Thomas Erskine May in 1844, and updated regularly ever since, this evolving compendium of parliamentary practice is widely considered to be the most authoritative guide to the workings of Westminster available, especially given that the UK has no written constitution. Responding to complaints that its £330 price tag effectively made the rules regulating democracy inaccessible, Parliament made the latest version available online in July this year.

Prorogation — formally suspending Parliament without a dissolution — is an ancient procedure, but anyone searching Erskine May for an analysis of the principles surrounding it will be sorely disappointed. Despite the extraordinary implications for political democracy of suspending Parliament — preventing any debates, votes of no confidence, censure of ministers and law making — the business of prorogation barely warrants more than a few paragraphs in this or indeed in most other leading historical guides to parliamentary practice.

Part of the reason for this is that for most of the past century the business of prorogation has attracted remarkably little controversy. As a principle of the constitution — in effect the prime minister and cabinet — monarchs have invariably closed sessions of Parliament at times and in circumstances that have coincided with the legislative timetable and expectations of most parliamentarians. There have been some irregularities. Reckless, unwise or inexplicable, for instance, in 1948 the Labour government famously used prorogation to end a session early in September, close another session the following month, and then go into a third session. This allowed them to pass legislation rejected by the Lords, which was aimed at reducing the blocking powers of the peers, as quickly as possible. Crucially, this minimized the upper chamber’s ability to interfere with Labour’s programme of nationalization.

More recently, at the height of the 1997 cash-for-questions scandal, John Major’s government tampered with the convention that parliament should sit for at least 21 days after the election. This was seen as a move to render the present Labour government’s allies, made on March 21 rather than April 8. Opposition MPs protested that this had been done deliberately, in order to delay the publication of a committee report incriminating Tony Blair’s MPs such as Neil Hamilton until after the general election. Major vociferously denied this, however, and some clumsy attempts to challenge or postpone the prorogation met with short shrift from the Speaker, Betty Boothroyd.

In these cases there was little real constitutional controversy surrounding prorogation, not least because both governments enjoyed a majority in the Commons at the time (even if Major’s had disappeared by February 1997, leading him to rely on other support). They could therefore reasonably claim to represent the broader will of Parliament. Things have not always been quite so clear-cut, however, and it doesn’t take much delving in Britain’s more distant political past to discover a rather different world of prorogation, involving not only parliamentarians but also ordinary citizens and the nation at large. This was especially true in the nineteenth century, where so much of our current preoccupation with the principles of parliamentary procedure seems to take us.

One of the most striking nineteenth-century constitutional rows over prorogation occurred during the bitter struggle over parliamentary reform in 1831. When the pro-reform Whig ministry lost a key Commons vote — and the confidence of Parliament — the king, William IV, declined to accept their resignation, fearing a popular backlash if any new government took over that was less committed to reform. Anti-reformers in the Lords, however, were determined that Parliament should continue to sit and find a more acceptable plan of reform that would command a majority in both Houses. They therefore resolved to move an address to the king preventing a prorogation. As Lord Wharncliffe put it, “under the present excitement of the public mind”, prorogation was “likely to be attended with great danger to... the Crown and state” and prevent a “calm and deliberate consideration” of the question.

Realizing that the commissioners sent by the king to prorogue Parliament might be kept waiting until this address had passed, ministers persuaded William IV to jump in a carriage and prorogue Parliament in person, something that had only been done once before in the previous 150 years (when he was told that the horses’ manes for the royal carriage took far too much time, that he apparently threatened to take a cab instead). His arrival caused uproar. Scenes of extraordinary chaos followed, with huge crowds of people willing the monarch on. His prorogation speech in the Lords immediately terminated the Parliament. He then announced an adjournment. In the following month’s general election a clear majority of pro-reform MPs was elected.

The role of ordinary people in this amazing political performance should not be overlooked. The vast number of pro-reform petitions and addresses that had flooded into Westminster in the run-up to the Whigs’ defeat was a key factor in the decision to prorogue. Parliament may not have supported their plans, but the people surely did. It was on this basis that William IV was persuaded to take his side rather than follow the majority in Parliament. Of course, the fact that Parliament remained unformed, and the Whigs were trying to restore their representative nature, complements this whole constitutional conundrum. Ultimately, though, it was the perceived will of the people that triumphed over the stated will of Parliament.

The public’s influence over prorogation issues during the reform crisis did not end here. When the notoriously anti-reform Lords threw out the second reform bill in October 1831, the Whig prime minister Lord Grey received deputations from almost every London parish urging him to recommend to the king that any prorogation be kept extremely short, to avoid riots and “popular demonstrations” being triggered by an impression that reform had stalled. Petitions poured in from around the country in similar terms, imploring him to get on with it or risk revolution. Plans to prorogue until February 1832 were duly abandoned. Parliament was suspended for just seven weeks, from October 20 until December 6, 1831, when a hastily prepared new plan of reform was introduced.

This sort of involvement by the public in the politics of prorogation is not something that we are used to today. For much of the nineteenth century, however, Britain’s party system was less well developed and governments often lacked minorities, and the House of Lords was far from servile to the Commons. Controversies involving prorogation, as a result, were more frequent. The range of constitutional devices used by ordinary people to express their political views — petitions, addresses, deputations, memorials, to name but a few — was also much broader than just the ability to vote, something which most people in this pre-democratic period were, of course, unable to do.

The public meeting organized in Manchester against a prorogation of Parliament in September 1841 provides a good example of this sort of local political activism. Explaining its purpose, the veteran reformer and Peterloo witry Sir Thomas Potts argued that no prorogation should be allowed to take place until the appalling starvation of ordinary people resulting from the corn laws had been fully investigated. The purpose of praying “our Queen not to allow her Parliament to be prorogued till our grievances are taken into consideration”, he declared. His plans were stymied by local Tories, however, who implored their supporters to resist this “unconstitutional attempt to interfere with the prerogative of the Crown”. “Suppose the two houses of Parliament should not agree” on the corn laws, their spokesman protested, “is Parliament always to be kept sitting?”

The discussion of this issue in the Lords on October 1, 1841 took an almost identical turn, with the Liberal Earl of Radnor repeating Potter’s arguments in a debate against the Tory Duke of Wellington. Widespread protests that the government was deliberately “bucking the question” by proroging “without considering the starving condition of the people”, however, were ignored by the new Conservative prime minister. On 7 October 1841 the Queen prorogued Parliament until February 3, 1842.

Parliament for four months might seem extraordinary to us today, especially in the middle of an economic crisis, but it was by no means unusual or even the longest period regularly resorted to in the Victorian era. Just three years before, the Whig ministry of Lord Melbourne had secured a prorogation lasting almost six months. This not only shut down any further debate about the government’s totally inexplicable action of suspending Parliament in Lower Canada, but also prevented Parliament from having any say on the outbreak of Chartist rioting at home and British involvement in an Afghan war abroad. Ministers “are afraid to encounter Parliamentary scrutiny”, ranted the Tory press. “The object of this unconstitutional! and ‘blundering proceeding... is simply to gain time’

Minority governments, not surprisingly, had a particular penchant for long prorogations. Just as Melbourne’s wafer-thin minority had made it advisable for him to limit his parliamentary exposure as much as possible, so too the lack of a Commons majority helped explain Lord Derby’s willingness to prorogue Parliament for a full six months during both of his
 minority ministries of 1858–9 and 1866–8. Indeed it could be argued that these Tory minority governments would never have sur

vived for as long as they did without such long breaks.

The use of prerogatives to “pause” major parliamentary disagreements, or to take the heat out of controversies that threatened to mushroom out of control or undermine national unity, was also far more common in this period than has been widely recognized. Perhaps as it might seem, shutting down Parlia-

ment helped to ensure stability and solidarity during some key moments of British history.

In the political aftermath of the Irish rebel-

lion and Chartist uprisings inspired by the 1848 European revolutions, for example, Lord

John Russell’s ministry refused to postpone a

prorogation and “continue to sit from month to month”, as one Irish MP, Ralph Osborne, demanded. Lord Aberdeen’s government also had no intention of allowing its disastrous handling of the Crimean War to be exposed to any more parliamentary scrutiny than was absolutely necessary. National pride was at stake. When one of its own supporters, Lord

Dudley Stuart, announced that he would move for an address to the Queen against prora-

gation, in July 1854, it made it a matter of con-

fidenc. The historic precedent unset by Stuart for “interfering with the prorogation of the Crown” during times of war, from 1780, 1783 and 1802, cut little ice in the Commons, and he was forced to abandon his motion. One of the most striking attempts to arrest political unrest through prorogation occurred in 1820, at a time when a nationwide rebellion generally seemed on the cards. The Tory

government of Lord Liverpool had made itself desperately unpopular by supporting George

IV’s attempt to divorce his estranged and adulterous wife Queen Caroline. Against their better judgement, ministers had agreed to put

her trial in the House of Lords. During the
temporal and squalid proceedings that fol-

lowed, a huge wave of popular sympathy for

Caroline’s case swept the nation, backed by

leading Whig politicians, prominent reform-
ers and many women campaigners. As details of the King’s own debauched habits and prom-

iscuity emerged, it became clear that the gov-

ernment’s “bill of pains and penalties” against

the Queen would never pass the Commons.

Fearing the worst, the Prime Minister aban-

doned the bill, leading to demands for a “strict

inquiry” into the government’s conduct and the King’s interference. Before this could get

under way, however, Parliament was pro-

rrogued, to the accompaniment of shouts of

“Shame! Shame!” and angry scenes in both

Houses. “These men advised the King to pro-

rogue Parliament in an unprecedented and

hasty manner … hoping by this measure to

silence the indignation they had aroused”, one

reformer complained at a public meeting in

Durham. The Tories “unconstitutionally” pro-

rrogued Parliament “in order to terminate dis-

cussion and popular protest arising from their

persecution of Queen Caroline”, observed another critic.

Not long after the centenary of this sordid

affair, in December 1922, the rebel Labour MP

George Lansbury took another Tory govern-

ment to task over its decision to prorogue, this
time because he felt Parliament was “being

asked to break up without having done any-

thing effective for the unemployed”. Demand-

ing his “right as an individual MP to say that

the House should not obey the command of

Black Rod to go to Lords and be prorogued”,

he was rebuked by the Speaker J. H. Whitley

that prorogation was entirely a personal pre-

rogative of the Crown, acting “on the advice of

ministers”. There could be “nothing less con-

stitutional” than the King “being advised by

the minority represented by the honourable

member and his friends”, Lansbury was told.

The inference here – that the prerogative

advice given by ministers was “constitutional”

because it represented the majority view of

Parliament – has of course long become the

accepted rationale underpinning all modern

parliamentary practice. With majority govern-

ments invariably being the norm throughout

the twentieth century, there has been little need
to delve any deeper, and question Parliament’s

role or acquisitiveness in being suspended in this

fashion. The modern guidelines on proroga-

tion remain unchanged from the advice given

by the constitutional expert Joseph Redlich in

1903:

Proroguing Parliament has long been limited by

the conventional rules which together make up

the system of parliamentary government. It is in

always the responsible act of the Cabinet, which

must find its support in the approval of the

majority of the House of Commons.

But what happens if the government’s man-
edate is not quite so clear? Can minority govern-

ments still lay a claim to this royal prerogative

power? And what part, if any, should the people and public opinion be allowed to play in

the broader politics of prorogation?

The political heritage of the nineteenth

century is obviously far from being a blank

page when it comes to these key issues. Victo-

rian minority governments made extensive

use of prerogatives, sometimes with and

sometimes without public participation and

support. It was also not uncommon for British

governments of all types to shut down incon-
vienent scrutiny and debate during moments

of high political drama and crisis, even in the

face of bitter parliamentary or popular oppos-

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Perhaps the most striking aspect of prora-

gations in the pre-democratic era, however, was

the involvement and influence often exhibited by the people. Controversial prorogations

generated a vast number of public meetings

and protests centered on organizing petitions,

addresses and deputations to the Crown

and leading ministers – formal lines of communi-

cation between the people and their rulers that

for the most part had been abandoned and

forgotten. It has been a long time since the

issue of prorogation triggered these levels of

political scrutiny and public activism. But

there are historical precedents for the kind of

popular reactions that we are now witnessing.