

Parliament, government and the courts

We live in a relatively free society with some separation of powers. The common law evolves through court decisions by Judges. Parliament can at any stage seek to change the law by an Act of Parliament. Statute law commands respect from the courts and can override common law but the courts do not always "obey" it. They interpret it. Sometimes they interpret it in ways that Parliament dislikes and regards as a distortion. In such cases Parliament can legislate again to give a clearer instruction to the courts.

All our current domestic law and all the powers of government, Parliament and courts are subordinate to the EU Treaties, EU regulations and directives and to judgements of the European Court of Justice. An EU law can override or strike down an Act of Parliament or a judgement of our Supreme Court if appealed to the ECJ. That was the kernel of the referendum debate for many people, with many Leave voters wishing to restore our domestic rule of law without EU supremacy.

The courts reserve the right to query or even ignore Statute law if they think an Act of Parliament is unclear, or violates human rights or some other superior law or legal principle. A law has to be clear, fair to all and enforceable. An Act of Parliament saying the sun must shine tomorrow, or saying 20 year olds must get up at 6 am or saying people whose surnames begin with an A cannot be allowed a driving licence would all likely to be void for good reasons.

The courts traditionally have not interfered in matters of Crown or government prerogative or high politics. They have tended to take the view if asked that Parliament has the necessary power to curb or remove a Prime Minister who uses Crown prerogative in ways that annoy MPs, who in turn will be influenced by public opinion on these issues. If a PM ceases to please Parliament can remove him or her by a No Confidence vote.

The courts have also taken the view that where an issue is hotly contested between parties and factions within the public, it is best to let politics and Parliament sort out the disagreement. It would be unacceptable if the UK's departure or staying in the EU fell in the end to be decided by a judgement in the Supreme Court. Of course the Supreme Court needs from time to time to find against the government in judicial review cases where litigants are challenging the way government has made a decision or enforced a policy. That is not the same as the Supreme Court presuming to itself the unique power to settle the biggest political question of the decade. However big a mess Parliament has made of it, this needs to be resolved by Parliament. If Parliament finds a way to get us to remain in the EU after October 31, then it will fall to the electorate to remove from office those who have failed to implement the will of the people.