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'Them's the breaks' - Boris Johnson's fall and exit as Prime Minister of the United Kingdom

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Boris Johnson è giunto al potere come primo ministro del Regno Unito con una maggioranza inattaccabile di ottanta membri del parlamento (MPs), dopo le elezioni generali del dicembre 2019. L'uomo che doveva "get Brexit done" sembrava in completo controllo del suo partito, della Camera dei Comuni, del suo Paese. Uno dei primi ministri più controversi della nostra storia, Johnson, è stato lanciato da un caso mediatico all'altro. Il suo governo ha messo in luce le debolezze della contemporanea costituzione britannica e come tali debolezze possano essere "esposte" da un politico determinato a non essere vincolato dai vincoli convenzionali sul suo ufficio. Il paper traccia, dunque, il percorso verso la caduta di Johnson e le sue dimissioni, e suggerisce quali aree della Governance del primo ministro debbano essere attenzionate dal nuovo primo ministro del Regno Unito.

Boris Johnson was swept to power as prime minister of the United Kingdom with an unassailable majority of eighty members of parliament (MPs) after the general election in December 2019. The man who was to 'get Brexit done' seemed in complete control of his party, the House of Commons and the country. One of the most controversial prime ministers in our history, Johnson was propelled from one cause célèbre to another. His rule exposed weaknesses in the contemporary UK constitution and how those weaknesses can be exposed by a politician determined not to be bound by conventional constraints on his office. The following tracks Johnson's downfall and resignation and suggests areas in prime ministerial governance that need to be addressed by the incoming UK prime minister.

1. Setting the Scene

Boris Johnson^[1] rose to power as Prime Minister (PM) of the United Kingdom with a promise to ‘Get Brexit done’! Like so many mantras about Brexit it made little sense and was certainly never realised in terms of either putting into action a comprehensive plan for a post EU UK or settling the terms of our departure, as witness the continuing disruption over the Northern Ireland Protocol (NIP). The EU Commission has launched several legal actions against the UK over the Protocol. Johnson was the prime architect of Brexit, in company with his adviser in chief Dominic Cummings and Nigel Farage, former leader of UKIP and the Brexit Party. Brexit had become the overriding redemptive promise through which all past mistakes, shortcomings and woes would be forgiven and forgotten. But it stayed at that, and no plan or Brexit strategy was developed for the UK’s future.

After months of sterile stalemate in Parliament in 2019 where Mrs May’s Brexit agreement with the EU had been rejected by the Commons on three occasions – although Johnson voted for the third May attempt – he replaced May as PM in July 2019 and eventually persuaded the opposition to agree to a general election which swept him to office with an 80-seat majority in the Commons in December 2019. More people voted for parties that would have offered a second EU referendum than for the Conservatives (Tories)^[2] but the British first past the post outcome for general elections, which makes no concession to proportional representation, gave him a resounding victory in terms of his new parliamentary majority. Doubtless a desire to see the end of parliamentary wranglings over Brexit played a significant role in his victory. Parliament played on Johnson’s weak position in the Commons before the 2019 election (inherited from Mrs May), where he had no majority until December 2019. The Commons sought to ensure that the UK did not leave the EU without an agreement and that the Commons had to approve by law the deal that was made. The pro Brexit media characterised this as gamesmanship and abuse and many electors were persuaded. Johnson’s reputation as a card sharp was cemented long before his lies about the EU and the benefits of Brexit. There was much in his past to suggest that Johnson was a loose cannon. Sacked on several occasions for lying, one former boss said he would not trust Johnson with his wife or wallet^[3]. His mop of

untamed blond hair, his studied bedraggled appearance, his classical quips and ready eloquence and love of playing to the gallery endeared him to traditional Tory voters and new converts in the so-called “red-wall” seats where Labour had held sway for years in working class areas. His populism appealed across class boundaries and cultures and seemed engaging not threatening. He was a “toff”, as an English upper-class gent is colloquially described, with the common touch and his manifesto promised to engage in levelling up the UK (bringing support to poorer regions) after over a decade of Tory austerity had been particularly severe on those regions. His first speech as PM set the bullish tone for his administration. The «*doubters, the doomsters and the gloomsters*» would all be shown to be wrong^[4].

Charisma and chutzpah he had in abundance. Living off his wits was his style. Deception, charm, bluff, along with smoke and mirrors, were his metier. But there was a darker side which the prime ministerial power in the British system shored up by parliamentary sovereignty afforded him. He was vengeful and merciless against his enemies or those who disagreed with him – by which one means anyone who crossed or checked him. This included the UK Supreme Court, the High Court in general, the Electoral Commission, the Information Commissioner, the BBC, long-standing senior Conservative MPs and his ministerial colleague Michael Gove. Again and again, he has shown his contempt for attempts to render him accountable for his exercise of power. His use of patronage for corrupt purposes was breath-taking and was shown in the placing of public contracts,^[5] especially in the Covid outbreak and the making of public appointments, in his elevation of supporters to the House of Lords, including the scions of former KGB agents and oligarchs, in evidence right to the end of his tenure, and his espousal of freedom of speech to protect the right-wing press in supporting him.

Johnson is a man who placed the cover of the political constitution, a product of English history, between him and accountability for his actions. The Supreme Court judgment in *Miller No 2*^[6], where Johnson attempted to use the royal prerogative to prorogue Parliament, blew his attempt to use prerogative power to render him unanswerable for his actions, unanswerable that is apart from general elections or revolt by his Cabinet or Tory MPs. The attack on the courts was via reforms in judicial review and the Human Rights Act 1998 (HRA)^[7]. While

judicial review reforms were not substantial the proposals for the HRA in the Bill of Rights Bill will freeze the effect of the ECHR, undermine or curtail the courts' ability to establish positive duties on public bodies, place obstacles in the way of relief, make the judgments of the European Court of Human Rights (CHR) optional and in some cases completely ineffective. In introducing a Bill into Parliament a minister will no longer have to declare that the Bill complies with the ECHR as required by the HRA. The Bill undermines the HRA's attempt to get the executive, parliament and the courts to work together to protect human rights.

Johnson wanted to reverse the movement towards a more legally/judicially inspired constitution in the UK, a development evidenced since the 1970s and which was EU and ECHR influenced. In this development the judges assumed a more prominent role in checking abuses of power and illegality by government and public authorities. Much has been made, quite rightly, of the development of the common law constitution in the United Kingdom^[8]. Johnson showed that in an *English* constitution, in which so much still depended upon good form, balance and personal integrity, and respect for convention, there were few safeguards that could be prayed in aid when a PM was determined to play fast and loose with a Commons majority of 80. He seemed deliberately to be flouting all principles of good governance simply to see what he could get away with. His action was brazen in the extreme, shocking.

In the end it was his own Tory MPs who turned against him – he won a vote of confidence in June 2022 (below) – and then crucially in July his cabinet rebelled. Tory MPs had become increasingly fretful after a series of by-election defeats to Labour and the Liberal Democrats and after his misrepresentations about partying in No 10 when the rest of the country had to endure lock-down for Covid in often heart-rending circumstances, and so much else. The partying is still under investigation by the Commons privileges committee which is investigating the question of contempt by Johnson for misleading statements to the House of Commons in relation to his presence at parties, which he denied^[9].

The full story of his former Svengali Dominic Cummings and his role in bringing Johnson down has yet to be unfolded. Cummings was left with an indelible sense of grievance after he was dismissed by Johnson as chief adviser, widely reported through Johnson's wife's instigation, and then set about a series of disclosures of

serious misconduct, malpractice and criminality by Johnson as well grave deficiencies in his basic ability to govern. Johnson's rule was characterised by almost uncountable reversals of policy with precipitate speed not least in relation to Covid, herd immunity and then lock-down. The delay cost thousands of lives. Reversals included those on a commitment not to increase tax or national insurance.

The following episodes stand out as crucial in the nemesis of Johnson. One should note that public sentiment had clearly turned against Johnson as evidenced when he was booed by the crowd when entering St Paul's cathedral for the Queen's platinum jubilee celebrations in June 2022 and by a series of by-election disasters.

2. Paterson Fiasco

On 3 Nov 2021, Parliament debated reform of the Parliamentary process for upholding standards of conduct for MPs. A code sets out the standards^[10]. A commissioner oversees allegations and reports to a committee of MPs. The matter had unsurprisingly become partisan and was fomented by one episode involving Owen Paterson, Tory MP. The Parliamentary Commissioner for Standards (PSC), the independent watchdog on standards appointed by Parliament for a five-year term, had issued a damning report on Paterson's lobbying activities on behalf of two companies, a practice forbidden by the code of conduct on parliamentary standards^[11], followed by a recommendation on suspending his sitting as an MP for 30 days by the Parliamentary Standards Committee. A suspension for more than ten days can result in a re-call petition [by local constituents] leading to a by-election.

The government wanted to introduce an amendment to the report in a debate in the Commons which removed the Commissioner's ruling against Paterson and to overhaul the independent system on standards. The existing Parliamentary Standards Committee which contained independent members (7) as well as MPs (7) was established in 2012^[12]. The government proposal for the 'overhaul' would be a committee chaired by a Tory MP with a casting vote and with four Tories and four opposition MPs – ensuring a majority of Tory members. The Labour and Scottish National parties both said they would not sit on the new committee

which was essentially ‘rigged’. The vote in favour of allowing the government backed amendment was 250-232 with 13 Tories voting against and dozens abstaining. The vote in favour of the amended main question was 248-221. Tory MPs were subject to a three-line whip. This is an instruction from the government to its MPs to attend and vote in a particular manner at a Commons debate.

The PSC was about to make a decision on whether to investigate Johnson on the matter of private loans (and the source of) to decorate his No 10 flat in Downing Street - he had been investigated three times by the Commissioner, Kathryn Stone, on various matters and the Electoral Commission had also investigated the financing of the accommodation’s highly expensive decoration and the provenance of the finance raising suspicion of allowing undue influence to sway Johnson’s judgement. The Commissioner could also possibly have investigated Covid contracts placed by the government^[13]. Johnson was clearly out to stymie the PSC pre-emptively^[14].

The Tories complained that the PSC had acted unfairly in that she allegedly accused Paterson of being guilty before investigating and that Paterson had no right of appeal. In fact, there is a review of the Commissioner’s report by the Committee and then a review of their recommendation by the Commons in debate. The criticism was baseless. There was clearly an orchestrated campaign by Johnson against the Commissioner. Not for the first time a Commissioner had attracted the wrath of government – a former Commissioner Elizabeth Filkin upset the Labour government and minister Peter Mandelson and her position was not renewed at the end of its fixed term in 2002 but advertised and awarded to a new candidate^[15].

By 4 November 2021 the manifest error of the government three-line whip on Tory MPs to vote through the amendment and public reaction, even from the Tory press, caused a re-think and Johnson U-turn^[16]. This not only stank of changing the rules midway through the game but allowed the case of an individual, who had acted in clear breach of the rules, to be the cause of major reform to the system of MPs standards, while seeking to exonerate the MP.

The link to system overhaul of an individual case was severed, the error was acknowledged, so that Paterson could possibly have faced a future vote on the report criticising him although dropping the case against him was not reversed.

The government Brexit opportunities minister Jacob Rees Mogg assured the Commons the government would act in cooperation with the opposition before any change in the system for the scrutiny of standards and any new system would not be retrospective.

Paterson in face of these developments resigned his seat necessitating a by-election, and an overwhelmingly Tory seat was won by the Liberal Democrats. The climb-down was another spectacular turn around by Johnson. *The Guardian*^[17] reported that at a conservative assessment there had been 30 Johnson turnarounds in major policy matters since December 2019. The question was widely asked: «*How many times can his judgment be called into question like this without paying the appropriate penalty?*».

3. Sue Gray Report into No 10 Parties

The police had investigated allegations of parties in No 10 Downing Street which had been subject initially to leaks to the press and media. Such parties would have breached the Covid

lock-down regulations imposed and enforced by the criminal law and which were drafted by the government. During lock-down any such gatherings were criminally prohibited. The police, whose conduct over the inquiries raised many questions of taking an over-soft approach to these events in No 10, issued 126 Fixed Penalty Notices (FPN) in relation to breach of Covid regulations by holding parties at No 10. These, to repeat, are criminal penalties.

Johnson and the Chancellor of the Exchequer each received a FPN and this was reported as the first occasion when a UK PM had been found guilty of a criminal offence. On 25 May, following the final police FPNs, Sue Gray, a senior civil servant charged by the Cabinet Office to conduct the inquiries when the cabinet secretary had to step down because he had been at attendance at events in question, published her 48 pages^[18] report into the parties during lockdown at No 10. This painted a picture of bacchanalian excess and ill-disciplined behaviour in the official offices and home of the PM.

Her report commented on serious failures by Johnson:

- In her initial report in January^[19] she commented on «*failures of*

leadership and judgment in No 10 and the Cabinet Office»;

- Many events were attended by government leaders and *«should not have been allowed to happen»;*
- *«The senior leadership at the centre, both political and official, must bear responsibility for this culture»;* the public have *«a right to expect the very highest standards of behaviour»* in Downing Street and *«clearly what happened fell well short of this»;*
- There were *«multiple examples of a lack of respect and poor treatment of security and cleaning staff»*, which was “unacceptable”.

The report clearly illustrates a lack of proper leadership and responsibility on Johnson’s part. It also undermined his claim in Parliament that there were no parties in No 10, a claim that was dramatically rebuffed through the release of graphic photos of him in attendance. This matter is the subject of a continuing investigation by the Commons privileges committee.

4. Resignation of two Ethics Advisers and Revising the Ministerial Code

This subject concerns a void at the heart of the UK constitution. There is an absence of effective and independent procedures to hold ministers, including, especially, the PM, to account. This is concerned not with legality, the business of the courts, but with the principles of good governance such as selflessness, integrity, objectivity, accountability, openness, honesty and leadership – the Nolan principles (below). This is not usually the business of courts, though it might be^[20]. Political responsibility via debates and questions in Parliament are subject to party discipline and the whipped vote. It brings home the continuing truth of Maitland’s observation that at the heart of the English constitution there is much that is unknown to the law^[21]. The passage of time since this was written in the 1880s may require adaptation of the observation. But at its heart is a truth which this article illustrates and this despite the growth of judicial review and the common law constitution.

Since the second world war the PM produced Questions of Procedure for Ministers – now called the Ministerial Code. Originally it was a secret document

and was not published but it has been published since 1992. The code is not sanctioned by law. The PM's independent adviser on ethics was first appointed by Tony Blair in 2006. The adviser advises ministers on managing their private interests, so as to avoid any potential or perceived conflicts of interest. A "List of Ministers' Interests" is published twice a year, listing the relevant private interests of all government ministers. The independent adviser publishes an annual report, setting out the work the adviser has undertaken.

When requested by the PM the independent adviser also investigates potential breaches of the ministerial code by ministers including the PM. Here lies the problem. This very English *modus operandi* clearly depends upon good-will, probity and integrity on the part of the PM. It is hardly surprising that the system has collapsed under Johnson. A harbinger of future difficulties emerged under David Cameron when the code's instruction that ministers would act in accordance with the law, including international law, omitted the reference to international law. Johnson further removed the Nolan principles of "good governance" (above) from the code^[22]. Again it displays contumacious arrogance by Johnson and not simply a total lack of judgement.

Following recent changes, the independent adviser may raise potential breaches of the code with the PM, but he must consult the PM before he begins investigations.^[23] This effectively gives the prime minister the right to approve, or thwart, any investigations. The PM acts as arbiter of reports by the independent adviser on ethics and breaches. But what happens if the PM does not accept a finding by the adviser?

This was at the centre of the adviser's investigation into Priti Patel, the home secretary, and complaints of bullying of her civil servants. A report by Sir Alex Allen found that Patel had bullied civil servants in her department and breached the code but the report was rejected by Johnson. Sir Alex resigned. His successor, Lord Geidt, also resigned on 15 June 2022, after appearing before a select committee. He expressed his frustration^[24] that Johnson had not made any reference to his own conduct in the partying at No 10 in relation to the code despite findings against him by the police and Sue Gray. The issue of a police notice against him concluded the matter, Johnson believed. A £50 for a breach of criminal law gives no indication of the fitness for office in the most important position in government. The reaction of Johnson gives an insight into the

contempt he held for the rules his government had created and imposed on everyone else. Geidt resigned he claimed over the ‘impossible situation’ he was placed in relating to a potential breach by the government of international law and tariffs and their intention to do so. This was referred to Geidt by Johnson as a sort of “teaser” – a deliberately tricky question – but it was clear that the toothless and impotent office Geidt occupied was the reason for his resignation. There is no independent adviser at present^[25].

5. Vote of Confidence in Johnson

By 6 June 2022, Sir Graham Brady MP, the chair of the 1922 committee of back-bench Tory MPs, had received the requisite 54 letters from Tory MPs of “no confidence” in Johnson as leader of the Tory Party. This is the process under the rules of the 1922 committee whereby a ballot of all Tory MPs for a vote of no confidence in their leader is triggered. *Nota bene*, the vote is in Johnson as party leader not as prime minister though if removed as party leader he cannot be PM. In fact, BJ was informed on 5 June that he faced a ballot. This took place on the evening of 6 June and the result was 211 voting in favour of BJ and 148 expressing no confidence. The latter amounted to 41pc of the elected Tory MPs. The vote share in support of Johnson was lower than the 63% received by former Prime Minister Theresa May when she won a party confidence vote in 2018, before resigning six months later over a Brexit deadlock. However, she had lost control of the Commons and had lost three crucial Commons Brexit votes. BJ had not faced this dilemma – yet. It was also lower than Thatcher and Major’s votes of confidence, which led to Thatcher resigning in 1990 and Major losing the 1997 general election to Blair. For Johnson he had won, end of story. For everyone else the runes were plain to read.

It was crystal clear to all, apart from Johnson, that his position was critically weakened and bets were on that the Tories would have a new leader by the 2022 Autumn party conference (he lasted until July 8 but remained as PM pro tem in an arrangement below). Under the 1922 committee rules Johnson would not have to face another party confidence vote for twelve months. Short of Tory MPs voting against him in the Commons to deny him a majority for bills, for a budget or a Commons vote of no confidence, he seemed safe for the present.

Difficult by-elections were beckoning, however, and Tory MPs were becoming increasingly restless for their own future.

The vote brought home the lack of overall strategy in Johnson's government. He was far from clear on what Brexit involved and was still struggling with what he signed up to in the NI Protocol. His government's white paper on security and foreign policy down-played Europe and focused new attention on east of Suez, in the latter case almost as if the lessons of Suez and Anglo-French debacle in Egypt in the 1950s had never been learned, or had been forgotten^[26]. Levelling up is next to incoherent without hard substance and he sacked the minister responsible in a fit of pique shortly before Johnson resigned. There is a persistent strain of avoiding accountability, *e.g.*, judicial review and HRA, of making expedient patriotic, nationalistic or populist gallery calls – *e.g.*, on Ukraine (where he and his supporters argued Johnson could not depart in time of war but in which not a single UK service person is on active war service), national security and measures to bolster armed services personnel immunity for overseas operations, arranging for far away Rwanda as a place to send asylum seekers. He has revived Thatcher's right to buy of public housing by public sector tenants, this time for social housing designed for poorer tenants. The price for tenants is heavily reduced from the market value. He announced a 90,000 reduction in the civil service. This lack of an overall strategy will cost his party dear. Moreover, his high tax, high spend policies have alienated whole swathes of Tory MPs and supporters, but they have attracted others in the party.

6. Johnson's Ninth Life – The Pincher Affair?

In early July 2022, a scandal involving the former deputy chief whip of the Tory party, Chris Pincher, unseated Johnson as PM. Pincher faced allegations of being a serial drunken homosexual “groper” (sex molester) about whom serious complaints had been made by junior colleagues over several years. Johnson denied knowledge of this behaviour before previously appointing him to ministerial office in 2019 and subsequently to the Tory whip's position in 2022. The “whip” is responsible for enforcing party discipline. No 10 admitted after questioning that Johnson did know in the latter case but had forgotten. A succession of ministers including the deputy PM were paraded in public to plead

Johnson's innocence.

A former senior civil servant (Simon McDonald former permanent secretary at the foreign office) reported that BJ had been briefed about the complaints before making Pincher a minister in 2019 and basically Johnson had lied. McDonald's letter to the PSC stated «*Inaccurate claims by 10 Downing Street continue to be repeated in the media*». He continued: «*They need to come clean. I think that the language is ambiguous, the sort of telling the truth and crossing your fingers at the same time and hoping that people are not too forensic in their subsequent questioning and I think that is not working*»^[27].

Sajid Javid, health secretary, and Rishi Sunak chancellor of the exchequer, resigned publishing highly critical letters to Johnson – Sunak as chancellor also suggested doctrinal differences on levels of tax/financial policy. Sunak's letter said government should be conducted «*properly, competently and seriously*». The implication was clear. For Javid, his letter conveyed the view that Johnson's leadership was neither «*competent*» nor «*acting in the national interest*». Johnson's reaction to Sunak's departure was that now he could lower the taxes! Westminster watchers were looking to see which way the cookie would crumble. By 7.00pm on 6 July, 38 members of government had resigned – mainly junior positions. More followed. Support for Johnson was visibly haemorrhaging. Michael Gove was sacked – reportedly for his sabotaging of Johnson's unsuccessful leadership bid in 2016. On 7 July, Nadhim Zahawi, the replacement chancellor, advised Johnson to resign and the replacement education secretary, Michelle Donelan, resigned herself within hours! A persistent and unchanging pattern of lying and deception, and getting others to exculpate or misrepresent on his behalf, leaving them to take the flak (criticism), had taken their toll. Pincher was the last straw.

7. Resignation

Boris Johnson, having tried to remain in office, announced his resignation on the morning of 7 July, although he expressed his wish to remain until the autumn. What, one may ask is the deputy PM for? This displays an extraordinary amalgam of delusion, megalomania and insensitivity to constitutional responsibility. As usual he confused the personal, political and constitutional and looked on his

mandate as directly conferred by the electorate in 2019 as a presidential, and not a prime ministerial, appointment. In the UK, the electorate vote legally for their local MP not the party leader. He sees himself as a tribune of the people, mandated personally like a president by the just short of 14,000,000 Conservative votes at the general election in 2019, voters who were moved by his mantra “Get Brexit done!” Within a day he had assembled a new “government” for his caretaker role leaving doubts in some minds of his real intention to depart^[28].

His “resignation” speech continued the vain-glory and bombast of his premiership. The Cabinet acted in an “eccentric” manner in counselling his resignation as the government was delivering its priorities successfully and for a mid-term government its polls were not noticeably bad, he exclaimed. The Tory MPs he opined displayed a “herd mentality” so common in the Westminster way unlike his solipsistic patrician conduct. His successor was promised “as much support as I can” confer, in a poison chalice manner. “Them’s the breaks” he said to sum up the workings of a malign and inscrutable destiny. Not a scintilla of apology for the untruths, deceit, misrepresentation, corruption, cronyism, laziness, arrogance and misrule that even many Tory MPs had become ashamed of. He had destroyed three Tory governments in six years. He was popular as an ally in Ukraine reflecting the national sympathy for that country, and the Covid vaccination roll-out was successful but the UK had among the highest Covid fatalities among any European country, the efforts against the pandemic were often marked by hesitancy, vacillation and chaos and sheer favouritism in awarding ineffective contracts and making senior appointments.

He would certainly satisfy the Napoleon test of “Is he lucky?” as the emperor asked of new appointments to general. He was lucky in his enemies. Mrs May was a lightweight fill-in as PM whose rash decision to go to the country in the 2017 general election left her without a majority and victim to Brexit forces that would have broken a far stronger politician.

The 2019 European Parliament election results were a disaster for the Tories. May simply couldn’t counter the hard Brexit element in her party as she strove in good conscience to achieve a UK-EU withdrawal agreement that wouldn’t scupper the UK’s future with the EU. BJ did in fact vote for her third WA having rejected the previous two attempts. In December 2019, Johnson faced Jeremy Corbyn as the least popular leader of the Labour Party in memory who led

Labour to their worst general election result since 1935. Yes, Boris was lucky. His claim to fame, Brexit, was brought about by lies and is far from done. Relations with Europe are bad. The UK standing in the world is in serious decline and we have the lowest predicted growth rate in the G7 for 2023 according to the IMF. He «*liked his cake and eat it*» as the saying goes; the rules applied to others, not to a Colossus like himself. As his old Eton housemaster said disapprovingly of him at school: Johnson was «*Free of the network of obligations which binds everyone else*». And so he continued, caught out and sacked on various occasions in the past but always rising with impunity.

8. His Successor

The Tory party faces a difficult future: under present rules its successor will be chosen by largely white, wealthy and predominantly southern males with an average age of 57. The party's 2019 election success was due to northern and midland "red wall" seats, and some in north Wales, comprising poorer voters taken in by his promise of levelling up and expenditure on them. There are antipathies here and a class and culture antinomy that may not survive his departure. He struck a chord with the red wall voters on Brexit who saw nothing in the EU for them.

Will the support for Ukraine (almost certainly), levelling up (comprising what exactly?) and Brexit (indubitably) survive his leadership under a new Tory prime minister? How essential were his personal support for the bills to repeal the HRA and unilaterally re-write the NI Protocol for their successful negotiation through Parliament? Johnson's bombast was essential in undermining and diminishing international law through Parliamentary sovereignty – manifestly on display in the NIP and BoR Bills. None of the leadership contenders carry his chutzpah and that arrogant contumacy so necessary for Boris' front and assault on diplomatic and global legal norms. He was cut in the Trumpian mould.

Keir Starmer, the leader of the opposition Labour party, promised to call a vote of confidence in the Commons if Johnson tried to hang on as prime minister – a successful vote would presage a general election and the possibility of many Tory MPs losing their seats making them unlikely to vote in favour. On 18 July 2022, following an attempt by Labour to hold a confidence vote in both the

government and Johnson in order to try to force him out sooner, the government objected saying it was unnecessary because the prime minister had already said he will go. The Conservatives instead proposed their own confidence motion in the government.

Johnson's government won the confidence vote it had called in itself, with members of the governing party voting in support of their government to avoid triggering a general election. The government unsurprisingly won the vote by 349 to 238.

The Tories set in motion the process for selecting two candidates to stand for their leader and PM. After a series of eliminations voted on by Tory MPs, two candidates emerged who will go forward to a ballot by members of the Tory party. Rishi Sunak, former chancellor, and Liz Truss, the foreign secretary, will go to the Tory party members and will be voted on by 5 September. Among the vote by MPs, Sunak secured more votes. The electorate is now Tory party members not MPs. Membership numbers are not disclosed but membership characteristics were described above. Membership numbers between 160,000 and 175,000 – 172,000 was mentioned on September 5. According to the Office for National Statistics the UK electorate in 2020 was 47.6 million^[29]. A fee is paid for membership. Liz Truss emerged as the favourite in this contest and her avowal of “red meat” Thatcherite and right wing economic and social policies and a hard pro Brexit stance were manifest.

On 20 July, the day the two candidates emerged as final contenders, we witnessed the day of BJ's last question time in Parliament and he ended a bullish statement with “Hasta la vista, Baby” – a hint perhaps that he would be back as PM?^[30]

Truss duly emerged as the victor in the members' poll, but not with as resounding a victory as anticipated. On 6 September 2022, in Queen Elizabeth's last public official act as monarch before her demise, the Queen invited Truss to form a new government as prime minister.

9. Conclusion

This episode is about far more than just one bad apple and now that it is plucked from the barrel, almost, the problem is over. One should not presume that with the departure of the headstrong Johnson the political constitution in the UK will

return to normal and that self-restraint and balance will return to governance. Neither of the two candidates competing to replace Johnson as PM has shown any initial interest in addressing the constitutional problems his premiership has left^[31]. The chair of the committee on standards in public life, which advises the PM on such standards, wrote to the two candidates reminding them of the Nolan principles which he wanted to “re-engage” *i.e.*, they had been ignored. It is a responsibility of that committee to promote Nolan’s principles^[32]. The spirit of nationalism, enflamed by the maelstrom of Brexit, suffuses the Tory party. Contempt is shown among many leading current Tory politicians for international law, international cooperation and comity. In the world today they are not alone sadly.

Johnson showed that when a large Commons majority empowers the prime minister it represents a fearful force in politics. Parliamentary sovereignty can too easily be abused. There is no written constitution, although one might question what guarantee of security that might offer given the example of the US Supreme Court majority’s attachment to originalism^[33]. Events have brought forth calls for a written constitution in the UK. I have written elsewhere that the barriers to this are seemingly insurmountable^[34]. One cannot argue that the common law, and common law constitution, freeze law in time as the originalists argue for the US constitution^[35].

In the “No confidence” debate in parliament, Johnson boasted he had got Brexit done and he had “Seen off Baroness Hale”^[36], the UK supreme court president at the time of *Miller No 2*. He had done no such thing. It was characteristic empty bombast. But he has attempted to confine the power of the courts in judicial review, although the changes here are much more modest than the original plans, and to repeal the HRA. This specifically seeks to undermine the role of the ECHR, which remains a part of UK law, and the CHR which is reduced almost to an irrelevance. The changes also seek to impose restrictions on access to the domestic courts under the proposed bill. But the proposed changes do not affect the development of the common law of human rights which has been evolving for many years. It is to be hoped, and one expects, that the UK courts will continue to do their work fearlessly and constructively for they are essential safeguards in checking abusive and unlawful government. The day after assuming office, Truss’ government announced it was dropping Johnson’s bill to

repeal the HRA. The bill was described as “politically unworkable”.

The practice of allowing a political party to elect a new leader when in power with such a small and one-sided constituency belittles the fact that it is not just a party leader that they are electing but the PM and head of government. The same opportunity would be given to any governing party, there is no favouritism here, but what is belittled is the interest of the state and the public interest inherent therein. If the resignation of a leader leads to the requirement of legitimation of a new PM via a general election, Johnson’s ministers would never have resigned forcing his resignation. They might well have lost their seats! Elect a party leader by membership, it is after all a token to wider participation, but the choice of PM should be endorsed by a vote in Parliament.

There is manifestly a problem with the upholding of standards within government and the deficiencies of the “Ministerial Code” and the role of the independent adviser were exposed in detail. The code has been in the personal gift of the prime minister. Is it time to back the code up with legislation, which would set a framework for its operation and which would include the Nolan principles as a mandatory requirement together with the re-inclusion of ministerial adherence to international law. It might also in a rare case offer the courts a look-in where a breach transgresses domestic law. The code should also allow the adviser to conduct his/her own inquiry into ministers, including the prime minister, and set the expectation that the prime minister will abide by the adviser’s findings and recommendations unless the prime minister spells out good reason not to accept the recommendation. This would lay the prime minister open to judicial review where the recommendation is not followed, and non-acceptance is not fully reasoned^[37]. The government did not consider it appropriate to legislate for the code or for the office of independent adviser, arguing this would undermine the constitutional settlement by conflating the executive and legislature, and would encourage judicial review of “political matters” that the government considers to be non-justiciable. «*It would not be in the public interest to further fuel politically-motivated judicial reviews*»^[38].

The question of standards in public life raises many concerns which we cannot address: scrutiny of public appointments, elevation to the unelected House of Lords by PM patronage, allowing MPs a free vote on debates concerning recommendations from the public standards committee, transparency and

lobbying. A report by the independent committee on standards in public life has set out detailed proposals for reform^[39].

The major reason for the division in UK politics and the reason for Johnson's ascendancy is of course Brexit. The fact is that even though a majority of well over 50pc of UK electors in a variety of polls believe Brexit was a mistake, and around 35pc think otherwise, polls also show a new referendum on Brexit would be once again close to evenly split. The UK still has a long, long way to go to come to terms with Brexit. It is a journey that has hardly begun.

Two matters of concern to the EU follow from this. One concerns the Bill to undermine the NI Protocol which Johnson signed and praised in 2019. This passed its third reading on 20 July and now makes its way to the Lords where one can expect vigorous opposition.

The second is the Bill of Rights Bill to repeal and replace the HRA. This does not touch the EU, although it does affect the UK's obligations under the UK-EU treaties and NI Good Friday agreement and UK devolved responsibilities. This also can expect a bumpy ride in the Lords. There is a convention that the Lords will not vote against commitments given by a government in a general election manifesto. But the 2019 Tory manifesto spoke of "updating" the HRA not removing it, and undermining the ECHR and CHR. The dropping by Truss of the Johnson bill repealing the HRA was noted above.

1. With reference to the expression used in the title, "Them's the breaks", please consider that it's a US street talk for the way the balls spread in a pool game after the initial "break".
2. <https://commonslibrary.parliament.uk/general-election-2019-turning-votes-into-seats-for-figures>.
3. <https://www.theguardian.com/commentisfree/2012/oct/10/boris-johnson-unfit-to-be-prime-minister>
4. <https://www.bbc.co.uk/news/uk-politics-49102495>
5. See Commons Public Accounts Committee: <https://committees.parliament.uk/publications/23257/documents/169721/default/> and serious shortcomings in audit trails, transparency and contracting procedures amounting to 'woefully inadequate record-keeping' by the department for health and social services in awarding contracts worth almost £777 million. See note 11 below.
6. *Miller v Prime Minister* [2019]UKSC 41.
7. See P. Birkinshaw at <https://ceridap.eu/the-uks-future-contribution-to-european-public-law/>.
8. The literature is voluminous, but a useful starting point is John Laws *The Common Law Constitution* (2014) Cambridge University Press.

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9. The Committee ruled that ‘intent’ was not a necessary component of the parliamentary offence of contempt by misleading the House <https://committees.parliament.uk/publications/23198/documents/169500/default/> 31. [T]he focus of the House’s contempt jurisdiction is on the effect of the action or omission in question – does it impede or obstruct the House’s functions, or does it have the tendency to do so, directly or indirectly. 32. It is not necessary that intention is involved. Although some degree of intent may be inherent in the public perception of “misleading”, that is not decisive. I add, failing subsequently to correct a misleading statement could well amount to a contempt regardless of an absence of intent to mislead at the time of making the statement.
10. <https://www.parliament.uk/business/publications/commons/hoc-code-of-conduct/> This is an internal Parliamentary code, not law.
11. See note 5 above for the highly critical report by the Commons Public Accounts Committee on one of these companies. All the criticised parties denied culpability.
12. The committee’s forerunner was established in 1995 following serious corrupt activity by MPs. On the separate Independent Committee on Standards in Public Life reporting to the PM, which was established in 1994, see note 32 below.
13. See PAC note 5 above.
14. Committee on Standards - Hansard - UK Parliament.
15. House of Commons Hansard Debates for 13 Feb 2002 (pt 10) (parliament.uk).
16. Committee on Standards - Hansard - UK Parliament.
17. 5 November 2021.
18. See the following link here.
19. Investigation into alleged gatherings on government premises during Covid restrictions: Update (publishing.service.gov.uk)
20. See *R (FDA) v Prime Minister* [2021] EWHC 3279 (Admin).
21. F.W.Maitland, *The Constitutional History of England*, (1955 reprint), pp. 387-388.
22. Ministerial Code (publishing.service.gov.uk).
23. Statement of Policy and role of Independent Adviser: Revisions to the Ministerial Code and the role of the Independent Adviser on Ministers’ Interests - GOV.UK (www.gov.uk).
24. Read Lord Geidt’s letter of resignation as Boris Johnson’s ethics adviser | Boris Johnson | The Guardian.
25. See conclusion below and text at note 38 and 39.
26. Global Britain in a competitive age (publishing.service.gov.uk).
27. <https://www.civilserviceworld.com/professions/article/exfco-perm-sec-no10-needs-to-come-clean-on-pincher-story>
28. Johnson will stay in office as caretaker for two months, the same period as Mrs May, but he initially announced “until the autumn” – presumably hoping to stay on until the Tory party conference in October and an opportunity to appeal to the Tory members? On 6 September, he announced that like Cincinnatus he was retiring to the plough – Cincinnatus was recalled by Rome to defend her against her enemies!

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29. Electoral statistics, UK - Office for National Statistics (ons.gov.uk).
30. Engagements - Hansard - UK Parliament.
31. Sunak has said he would “replace” Lord Geidt.
32. See note 38 below. The chair is Lord Evans, former director of MI5, the secret service. The first chair was Lord Nolan: Committee on Standards in Public Life - GOV.UK (www.gov.uk).
33. *Dobbs v Jackson WHO* USSC No 19-1392 (24/06/22) on abortion; *New York State Rifle & Pistol Association v. Bruen* USSC No 20-843 (23/06/22) on right to carry guns.
34. P. Birkinshaw, in P. Huber, ed. *The EU and National Constitutional Law*, at pp. 205-206.
35. The dominant creed of a majority of USSC justices.
36. He defeated her. See Confidence in Her Majesty’s Government - Hansard - UK Parliament, col 726.
37. *Rob Evans v Attorney General* [2015] UKSC 21; *R (Bradley) v Secretary of State for Work and Pensions* [2009] QB 114.
38. Statement of government policy: standards in public life - GOV.UK (www.gov.uk)
Statement of government policy: standards in public life - GOV.UK (www.gov.uk) (27 May 2022).
39. Upholding Standards in Public Life - Published Report - GOV.UK (www.gov.uk).