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## Why Attorney General Geoffrey Cox is the new doyen of Brexit

The darling of Conservative Party conference has a vital role to play in the coming months

by [Raphael Hogarth](#) / November 7, 2018 / [Leave a comment](#)



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Four months ago, nobody knew who Geoffrey Cox QC was. If the Tory MP ever made it into the papers, it was for the stratospheric sums he billed when moonlighting as a barrister. Yet now, following Cox's appointment as attorney general, cabinet ministers are demanding to see his advice before deciding whether to back the prime minister's Brexit deal, the DUP wants his opinion to be published, and even Labour frontbenchers are itching to know his view. All of a sudden, Cox is the doyen of Brexit.

Such notoriety is unusual for an attorney general. This is not normally a big political job. The office holder is not in the cabinet and, for most of the 20th century, attorneys general did not attend most cabinet meetings. They were held at arm's length from policy discussions so that when the need for legal advice arose, there would be no suggestion that they had massaged the law to flatter their political views.

But Cox cannot be the kind of attorney general who lurks in the background as a mere adviser. He is an unabashed Brexiteer and far too compelling a political performer for that. As the warm-up act for Theresa May at Conservative Party conference, he effortlessly wooed a hall full of activists with his lyrical paean to self-government. "Methinks I see in my mind a noble and puissant nation," he enthused, "rousing herself like a strong man after sleep, and shaking her invincible locks!" He was, in fact, quoting

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the *Areopagitica*, a 1644 pamphlet distributed to parliamentarians by John Milton. For listeners not familiar with the work, this sounded like the sort of thing Geoffrey Cox might come up with himself.

More important than his flair as an orator, though, will be his facility with the small print. As the Brexit agreement morphs from political intention into legal text, politicians need someone to help them understand it. At two key moments, the process will turn on what the attorney general has to say.

First, when the prime minister comes to cabinet with her deal, Cox will be asked by cabinet colleagues exactly what is legally binding and what is not. Will the political declaration on the future relationship, full of ambitious commitments to cooperation, have any legal force? Will the UK's promise to pay the EU £39bn be binding whatever happens, or only if we reach a future trade deal? Will the deal produce different legal effects on either side of the Irish Sea?

Most importantly, if the deal commits the UK to a "temporary" customs union to keep the Irish border soft, could the UK one day decide to withdraw, or would it need the EU's permission?

Brexit-supporting ministers and MPs will probably not like the answers to these questions. The prime minister will therefore want to evade them or, worse, try to claim that the most attractive bits of the deal have more legal substance than they do. It would not be the first time: David Cameron boasted in 2016 that his renegotiated settlement with the EU would be "deposited at the UN" and so become binding in international law, neglecting to mention that much of it could still be overridden by other EU member states and by the European Court of Justice. This time, it will fall to Cox to give his honest assessment, first in cabinet and then, perhaps, in parliament. In truth, "legal advice" is quite a grand term for what the cabinet wants out of him. The attorney general, a clever man who is used to reading complicated and technical documents, is really going to be asked whether May is telling the truth about what her deal means, or not.

Friends of Cox warn that he does not pull his punches. "Geoffrey is fiercely independent," says Mathew Sherratt QC, a barrister at Cox's chambers and a colleague of 23 years. "If there's something that needs to be said, he will say it. I've seen him stand up and reprimand judges in situations where young barristers have been bullied. He didn't make his way at the Bar by kowtowing."

Such steel will be more important still when Cox approaches his second moment of truth. This will be when the government begins its next round of trench warfare with backbenchers in the House of Commons.

The prime minister will invite MPs to endorse a motion approving the deal: the so-called "meaningful vote." If the government can get that motion over the line, it will then bring forward legislation to implement the deal in UK law, the EU (Withdrawal Agreement) Bill. Both the motion and the Bill will, in all likelihood, be amended into oblivion by angry backbenchers—a referendum here, a customs union there, and maybe an attempt to delete the Irish "backstop" for good measure.

Some of those amendments could cause legal trouble. If the motion is so transformed that it is no longer clear whether parliament has approved the government's deal at all, then ministers could be legally prevented from ratifying the treaty. That would mean a "no deal" Brexit. If amendments to the Bill depart far enough from the spirit of the treaty it is supposed to implement, that could leave the UK in breach of its legal commitments to the EU.

Dominic Raab, the Brexit secretary, is already warning MPs that any amendments would be too legally risky to countenance, urging them to wave the deal through parliament unblemished.

Parliamentarians will look to the lawyers to work out how big the risks really are, and the attorney general will be the government's voice in that debate. But he is not the only legal heavyweight in parliament. Just as legal advice from every faction of the Commons ricocheted across the chamber when MPs considered amendments to the Maastricht legislation in 1993, so lawyers from different tribes will be called upon this time. Dominic

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Grieve QC, former attorney general and supporter of a second referendum, will surely be asked for his take. So will David Pannick QC, the constitutional law luminary who persuaded the Supreme Court that parliament had to be consulted before the government triggered Article 50.

No doubt Cox, a fan of the *Areopagitica*, will welcome a vigorous debate. "Give me the liberty," Milton wrote, "to know, to utter, and to argue freely according to conscience."

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