

The government made its case yesterday. For the sake of...

Published: January 14, 2026, 7:15 am

---

I spent a lot of time discussing Day One of the Supreme Court hearing on the Royal Prerogative last night: the Murphy household knows how to have a good time. It so happens that [the FT](#) summarises the conclusion reached quite well this morning:

*The government's case did not seem impressive. In essence, it contended that because there had been no law passed by parliament which prevented the exercise of the royal prerogative in respect of Article 50 then the prerogative was available.*

*The government was arguing, in effect, from the sound of silence.*

This is a weak case. From my point of view the big weakness is that the [AV referendum Act](#) did in 2011 say that it intended that the outcome of that vote be binding: in that case the government clearly knew how to draft legislation with that intention. Silence in the EU referendum case must have been deliberate then and nothing can be read into it. What is was meant to be, in other words. As a matter of fact reading in is legally wrong in this case then, in my opinion, based on recent precedent.

But it is also wrong for more reasons than that. Whilst I am well aware that determining the will of parliament is not always easy, in this case the claims made by the government are extraordinary. Normally reading in is required to interpret how a power will be used or interpreted. That is inevitably necessary and reasonable: words cannot predict all circumstances to which a law might apply. But here something much more sinister is being claimed: the government case is that silence on an issue gives it the power to act. I do not believe that. And I think it dangerous to presume that is true. The logic is that in the absence of legislation the Royal Prerogative prevails and the law is what the prime minister of the day thinks it should be. As a jurisprudential argument that is not just weak, it is decidedly dangerous, removing as it does all the checks and balances that are meant to be in our system, odd as it is.

And it lays the foundations for dictatorship.

The government made its case yesterday. For the sake of the country, our democracy, liberty and safety it needs to be rejected, resoundingly.

