What did Amy Coney Barrett say?

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Very soon Trump's new pick for the US Supreme Court will be grilled by Democratic senators about her conservative views on abortion and the Affordable Care Act. They are rightly worried that her appointment will put in place a 6-3 majority of rightwing judges on the Court, especially in the wake of Trump's explicit disappointment at the fact that even his picks have on a couple of occasions voted against positions he favoured. What assurance does he think he has that this pick will be more compliant, a 'loyal' 'Trump judge'?

It would be a great pity in the hearings if the senators did not ask what Justice Barrett said in her comment on John Finnis's paper at this event in late February this year.

As I have shown in my article, 'Lawyer for the Strongman', Finnis argues for the equivalent of the 'unitary executive' in US jurisprudence, i.e. the Schmittian position that the executive may exercise its prerogatives unbound by law.If Justice Barrett was not highly critical of Finnis, Democratic senators have even more to worry about than they know. The Senate will be confirming a jurist who believes that we need a strong executive to police the border between the 'friends' in a substantively homogenous community and the 'enemy' of the 'others', even if this means moving that border within the cities so that federal forces can 'deal' with those who might to take to the streets if Trump contests the election result, as they dealt with the 'terrorists' in the Black Lives Matter protests.

It is also worth remarking that at this same event papers were given by Professors Richard Ekins and Guglielmo Verdirame. Under Finnis's guidance, they are on the Judicial Powers Project Website and elsewhere making the argument that it is consistent with the rule of law for the UK Parliament to break the rule of law, so leaving the executive free of the obligations the same government had negotiated in an internationaltreaty just months before.

This 'risible' argument, as one eminent UK constitutional lawyer called it,is all premised on the view that international law is not really law, 'defective' as Finnis has proclaimed.

I am not sure that I agree, however, that the argument is laughable, except to make the point that it is so bad that no jurist could take seriously the claim that because government ministers and Parliament can violate the rule of law, therefore they may.See here. The reason not to laugh is that Ekins and Verdirame as well as other lawyers on what Tom Poole of the LSE aptly dubbed the Executive Power Project are directing the law 'reforms' of Johnson's government. The path the UK is on leads to the destruction of the rule of law and democracy. We can note here Ekins's astonishing claim that the judges of the UK Supreme Court who used reasoning long familiar to common lawyers to read a privative clause as not ousting all judicial review should be removed from office, a step which he claimed would not compromise judicial independence. In making this argument, he advocated the kind of tactic so successfully deployed in Orban's Hungary and in Poland over the last few years of using mechanisms of judicial discipline to ensure a compliant judiciary at the same time as maintaining a façade of the rule of law.

It would be good to know Justice Barrett's thoughts in this regard too.

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