Commentary

Heading for the Exit: the United Kingdom's Troubled Relationship with the European Union

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Abstract

So Brexit means Brexit, or so says Theresa May, the United Kingdom's (UK) new Prime Minister. But what does it actually mean? And how did the UK find itself travelling along this stony road towards withdrawal from the European Union (EU)? This article looks at the back story, gives comments on the referendum held on 23 June 2016, and identifies some of the issues that now lie ahead of the UK and the EU as they address the consequences of the referendum vote for leaving the EU.

TRAPPED INTO A REFERENDUM

British public opinion on the merits of EU membership has from the outset been divided, so no surprise that the arguments of the Eurosceptics should have become so widely shared. Their sentiments have permeated the politics of both the Labour and Conservative parties across the years, with divisive impacts inside both parties as well as across the wider political spectrum. So the more recent controversy is located in a much longer history of contention and ambivalence as regards the place of the UK in the wider European family.

What changed over the last decade or so was the increasing pressure to put the issue of membership 'to the people'. By habit and constitutional practice the UK has generally been characterised as a representative *and parliamentary* democracy, rather than as a direct democracy. However, the intra-UK devolution process began to make the resort to referendum on a 'constitutional' issue seem a plausible and appropriate means of settling an argument of country-wide importance. The appeal of the referendum as an instrument gained cogency in the light of the Scottish referendum on the independence of Scotland in 2014. The appeal of the referendum on the question of UK membership of the EU was bolstered by the fact that in 1974/5 the then Labour Government – deeply divided about the EU – had resorted to a referendum on the renegotiated terms of UK membership to deal with an intra-party controversy.

The debate over first the Constitutional Treaty and then the Treaty of Lisbon brought the issue to the fore again. The UK's politics had become complicated by the rising impact of the United Kingdom Independence Party (UKIP) – both populist and Eurosceptic. Moreover, the referendums held in France and The Netherlands in 2005 – both with majorities for rejection of the Constitutional Treaty – added weight to the argument that the UK electorate should also have its say in a referendum. As the Treaty of Lisbon went forwards for ratification in the UK the argument raged as to whether it was sufficiently far-reaching for a referendum to be appropriate, a discussion which increased the pressures for acceptance across the party spectrum: that under some circumstances a referendum was the right democratic response; that this might need to be a referendum on EU membership as such and not only on this or that treaty; and that it was only right for younger generations to have their say.

In the case of the Treaty of Lisbon the then Labour Government succeeded in arguing that it was not sufficiently far-reaching to merit a referendum. But the Conservative Party in opposition remained in favour – and all the mainstream parties found themselves conceding the case for a referendum in some circumstances. The debate had shifted from being 'when?' not 'whether?'. Hence, in 2011, the Coalition Government introduced the European Union Act which made provision for a referendum to be held in the case of a treaty proposal to transfer further significant powers to the EU.

RENEGOTIATION AND REFORM

So under what circumstances was the referendum held? Pro-Europeans slid from being clear in developing a narrative that was unambiguously in favour of continued EU membership to focusing their narrative on an acceptance that the EU was not perfect and their mantra became EU reform. The persistent eurozone problems did not help and the surges of both migrants and refugees did not help either. David Cameron, the Prime Minister, eventually chose in his Bloomberg speech of January 2013 to commit to an exercise in renegotiating some specifics of the relationship between the UK and the EU and then to holding a referendum on the outcome which would be a referendum on membership as such in the light of whatever had been renegotiated. The new Conservative Government in 2015, its stance no longer moderated by pro-European Liberal Democrat partners, came into office thus committed.

There followed in 2015/6 an exercise in renegotiation with the EU around a rather short list of key points: removing a commitment by the UK to 'ever closer union'; a reinforced commitment to completing the single market (including the digital economy) while also reducing the intrusiveness of EU regulation; safeguards for non-eurozone member states in future EU policy-making; and measures to address both the numbers of people moving to the UK from other EU countries and their access to welfare benefits. The character of this list played to sensitive nodes in UK public opinion but its narrowness also was very similar to the renegotiation exercise previously carried out in 1974/5.

In February 2016, the European Council agreed a text that appeared to satisfy the UK demands at least up to a point – the outcome on free movement for other EU citizens being the most vulnerable and least clear part of what was agreed. David Cameron then made his judgment call, namely that enough had been achieved for him to recommend this package to the UK electorate as a basis for the UK to *remain* within the reforming EU with a special form of membership.

THE REFERENDUM CAMPAIGN AND OUTCOME

The question on the ballot paper was should the UK *remain* or *leave* the EU? The two campaign platforms took shape but proved to be very different in character, interestingly drawing their analogies and lessons from very different analyses of other referendum experiences. They hence developed very different campaigning strategies.

The remain camp – Stronger In – was much influenced in its analysis by experiences in 1975 on the EU, the Scottish independence referendum of 2014, and the alternative vote (AV) referendum of 2011. The apparent consensus of the experts was that voters tend to vote in favour of the status quo rather than for change and hence that the chances of a victory for *remain* were high. The campaigning coalition brought together pro-Europeans from across the political parties, business leaders and the main trade union movement. The chosen strategy was to focus on 'killer economic facts' and the benefits of the status quo as opposed to the uncertainties of Brexit – very reminiscent of the campaign against Scottish independence. Much was assigned to depend on the supporting evidence provided by largely metropolitan experts and on the credibility of the more prominent political figures, in particular David Cameron himself. The remain camp very specifically chose not to engage with the 'hearts rather than heads' arguments or the identity issues. Their campaign was complicated by two further factors. One was that David Cameron (like Harold Wilson in 1975 and predictably so) decided to allow Eurosceptic members of his government to stay in government but to campaign for 'leave', thus enabling the Conservative Party to be explicitly divided and preventing

the Conservative Party machine from engaging with the campaign. The other was that the Labour Party was undergoing its own existentialist challenge under Jeremy Corbyn's leadership, was distracted and was also disrupted by a surge of support for UKIP in Labour heartlands in the north of England and in Wales. As things turned out, the remain campaign failed to generate a persuasive cross-party and cross-sectoral platform and became locked into a strategy mainly directed from the Prime Minister's office in No 10.

The leave camp looked and behaved very differently. Its strategists drew their analogies from experiences with EU referendums in Denmark, France, Ireland and The Netherlands, in which their 'no' campaigns had drawn on numerous sources of anti-establishment sentiment, and also from the UK AV referendum in which the successful 'no to AV' campaign had been run by some of the same people. It was a bicephalous campaign because UKIP ran its own campaign rather than merging with the cross-party Vote Leave platform. This turned out to be an advantage rather than a weakness in that it enabled the hard-edged UKIP arguments to be circulated while the Vote Leave platform was dominated in the public eye by heavy hitting mostly Conservative Eurosceptics. The Vote Leave campaign achieved two successes. One was the investment made over several previous years in identifying and corralling specific segments of 'no-sayers' from this or that community of shared interest or ideas. The other was an impressive tactical ability to generate short and sharp slogans: take back control from Brussels; control UK borders so as to reduce inward migration; save money from the EU budget contributions and instead use the money to build hospitals and so forth.

Somehow or other the leave campaign also reached much further outside the metropolitan political space than the remain campaign. In England outside London, the leave side predominated, as proved to be the case in Wales, with UKIP also gaining in popularity. The politics were very different in both Scotland and Northern Ireland. In Scotland, the remain camp proved strong and convincing, the politics of being pro-European entangled with the politics of Scottish independence. In Northern Ireland, the Catholic communities were overwhelmingly in favour of remain, while the Protestant communities tended to favour leave. The potential impacts of Brexit for the island of Ireland are huge and worrying given that the peace agreements over Northern Ireland were embedded in the fact that both the UK and the Republic of Ireland were members of both the EU and the European Convention on Human Rights. Moreover, the economic ties between the North and the South, as well as with mainland Britain, are intertwined and there is a long standing Common Travel Area for persons between the UK and Ireland. The Irish government carefully insisted during the referendum campaign that they would much prefer that the UK remain fully within the EU.

One further observation on the campaign: the media, both traditional and new, made a difference to the way the arguments of both camps came across. The BBC went for a form of balance which they interpreted as giving similar weight to the remain and leave protagonists rather than (as a public service broadcaster) as implying a focus on the substantive issues in a more deliberative way. More of the newspapers favoured leave than supported remain. In the social media, the ability of the leave campaign to develop short and sharp slogans translated rather easily into effective messages shared so as to reinforce their credibility.

The outcome was an overall UK result of 52 per cent in favour of Brexit and 48 per cent in favour of the UK remaining within the EU. But the voters were unevenly spread across the UK geographically: broadly speaking London, Scotland and N Ireland on the side of remain, with Wales and the rest of England in favour of Brexit. There were inter-generational cleavages: older voters more for Brexit, younger voters more for remain, but with the latter generating a lower turnout level; and socio-economic cleavages, with the more professional and wealthier voters more for remain and the less well-off and less highly educated more for Brexit. A significant proportion of voters from a non-European migrant background supported Brexit, partly encouraged by the possibility that after

Brexit there would be more opportunities for migrants and family reunification from the rest of the world. Neither the Conservative Party nor the Labour Party was in any state to mobilise its core electorate to support remain. We await full analysis of the electoral data but it is clear both that the electorate was fragmented and that voters on the leave side were casting their votes for a range of reasons that went far beyond the EU issues as such.

A CONSULTATIVE REFERENDUM RESULT BECOMES A GOVERNMENT POLICY

The first impact was the immediate resignation of David Cameron as Prime Minister and as leader of the Conservative Party. For a very brief period it seemed that there would be a leadership contest between the remain and leave camps. Instead Theresa May was elected unopposed – a politician who had been a lukewarm supporter of remain but who also had a history as Home Secretary of taking a tough line against inward migration and ambivalence about EU policies. She made radical changes to the cabinet putting leading Brexiteers into key positions: David Davis as head of a new 'Department for Exiting the EU'; Liam Fox as head of a new Department for International Trade; Boris Johnson as Foreign Secretary; and Andrea Leadsom as responsible for farming as well as the environment. Theresa May insisted that 'Brexit means Brexit'. Much remains to be clarified as to what this really means, but at least in the short term, it means that key positions for the eventual negotiations with the rest of the EU will be in the hands of tough Brexiteers, although her cabinet retains a number of ministers who had canvassed actively for the remain campaign, though not George Osborne who lost his cabinet post. What did become very clear after the referendum is that there was no properly crafted plan either among the Brexiteers or among the pro-Europeans either as to how to define the substance of a proposed new relationship with the EU or as regards the timeline for achieving it.

THE TIMELINE

Two points remain to be determined: the first is when the UK government will trigger Article 50 of the Treaty on European Union which provides for a process of negotiating withdrawal; and the second is the time that would be needed to negotiate a new relationship between the UK and the EU. Views vary on the merits of the cases for an earlier or a later triggering of Article 50, partly dependent on the UK government developing its negotiating objectives and partly a function of judging when the time might be ripe for a productive negotiation with elections pending in France, Germany and other EU member states. Theresa May announced on 5 October 2016 that the trigger would be pressed 'no later than the end of March 2017'. On 3 November the uncertainties were increased when the High Court issued its judgment that the government does not have power under the Royal Prerogative to trigger Article 50 without the authorisation of the British parliament. Moreover, as we shall see below, Article 50 envisages a period of two years for the withdrawal negotiations but also that period could potentially be extended – after all the EU has quite some record of prolonging deadlines in the face of political circumstances. Even harder to determine is how long it would take to negotiate a subsequent agreement on a new relationship – with perhaps an interim transitional period to be established. What has become crystal clear is that a quick break is not on the cards since the complexities of membership cannot be simplified or hurried. Estimates on this vary hugely, with some commentators suggesting that this might take many years. Perhaps the easiest way to conceptualise this is as an accession process in reverse, with the range of the *acquis communautaire* to be addressed, including so as not to create legislative voids or confusion in

the post-Brexit UK once outside the EU legislative system and specific issues to be addressed chapter by chapter.

Soft Brexit versus hard Brexit

It became clear in the aftermath of the referendum that the government had no clearly formulated plans for life outside the EU and that the leave camp had no unified or cogent view of what Brexit actually involved. It was one of the oddities of the campaign period that the leave campaigners had made an array of disparate (and seductively appealing) pledges about the benefits of life outside the EU, including spending the money saved from EU budget contributions several times over. No precedents existed for the withdrawal of a member state or territory, the cases of Algeria and Greenland not being pertinent to the case of the UK.

In essence, the discussion has come to be focused on a spectrum from soft Brexit to hard Brexit, that is to say from arrangements that might be close to the example of Norway inside the European Economic Area (EEA) to the case of any third country firmly outside the EU's trading and legislative regimes. This debate prioritises the following issues: the status of the UK in relation to the single market, ie how much of an insider or outsider; the trading framework for the UK, ie if not inside the single market then whether or not inside the EU customs union (like Turkey) or in a default reversion to membership of the World Trade Organisation (WTO), which is not a simple or rapid status to achieve; how to reconcile the UK's future market and trading relationship with the probable insistence of the EU on the UK maintaining free movement of persons for nationals of other EU (and EEA) member states; and what might be the financial bill for partial UK insider status, including for the 'flanking' policies and programmes such as those for EU-supported research and science. The government ministers from the Brexit camp and currently in key positions are at the hard Brexit end of the spectrum, while those who had been in the remain camp are to one degree or another at the soft Brexit end of the spectrum. As the pros and cons of various options become clearer, the government as a whole will have to decide where to pitch its negotiating objectives.

Of course, it is one thing for the government to determine its negotiating objectives and another to figure out what might be negotiable. This is a double edged question. On the one hand, it depends on how the EU and its other member states respond to the UK. This may well not become discernible until after the forthcoming French and German elections. Even then, there is likely to be quite a range of responses from the EU side, not least from the central Europeans from which so many of the incomers in the UK have arrived and for which the UK's EU budget contributions are so significant in cohesion transfers. Their understandable concerns will have to be weighed against the gaps that UK withdrawal will create in the EU portfolio, including within the common foreign and security policy activities in which the UK currently plays an important part. On the other hand, the UK government will have to take account of the concerns of UK stakeholders whose interests are directly and differentially affected by the potential outcomes as regards market and trading status and consequences.

 In addition, there are complications as regards the four nations of the UK, given the varying degrees of devolution to Northern Ireland, Scotland and Wales, and the particularly troublesome implications for the island of Ireland, including the potential prospect of border controls across the island. The issues range from macro constitutional to micro substantive such as those for agriculture – a policy devolved to the four nations – after the UK ceases to belong to the common agricultural policy. Even in the UK with its small farming sector, agricultural policy holds many traps for politicians.

INTERIM CONCLUSIONS

These are still early days. It will take a while longer for both the timeline and the substance to become clearer and longer still for the shape of the negotiations between the UK and the EU to become evident. Given the previous absence of a clear alternative to regular full membership of the EU, it remains to be seen what kind of settlement would command consent within the UK, even supposing that agreement can be found with the EU and its other 27 member states. On the EU side, there will be a push and pull between seeking to retain a close relationship with the UK in the light of its political and economic importance in Europe, on the one hand, and, on the other hand, avoiding a shallower form of arrangement with the UK that might be attractive to other currently full member states of the EU. Meanwhile, within the UK there are questions about where the balance of economic and political interests might lie and what the political constellation might be at the moment when hard decisions will need to be taken as to whether or not to accept the outcome of these negotiations. And how would any such acceptance need to be delivered? By the then government? By Parliament? By another referendum?

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