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The Brexit Negotiations, from the General Election to the End of Phase 1

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The following is based on a lecture given at the EU-Japan Friendship Week Symposium, held at Waseda University on 6 July 2017. The symposium was co-organised by the Waseda Institute of Political Economy (WINPEC) and the Organisation for Regional and Inter-regional Studies (ORIS) at Waseda University. For narrative purposes, the lecture was structured as a three-act play, examining Brexit in the past, present and future. The content has been updated to reflect the events in the second half of 2017.

Act I: Brexit past
Scene 1: The history

We open with a little scene-setting, establishing some narrative threads which will run through our story. First, the UK's political parties – with a few consistent exceptions – have always struggled with the issue of European integration. Around the time of the UK's application to join the European Community (EC), the Conservatives adopted a pragmatic approach, realizing that membership could support Britain's economic recovery by opening access to new industrial markets, and so halt its declining status as a world power. The Labour Party, for its part, was deeply sceptical: Hugh Gaitskell famously characterised the notion of Britain joining a federalising Europe as 'the end of a thousand years of history'. Later, Harold Wilson managed to broker a compromise position—grudgingly supportive of membership, but critical of the terms obtained by Heath on entry—but this barely masked the divisions in the parliamentary party. These positions were to reverse in the years following Margaret Thatcher's speech in Bruges, in which she successfully tapped into a discourse stressing the incompatibility of supranational authority and national democracy, which had been evident at least since Gaitskell's comments in 1962. This message now resonated with a growing eurosceptic element within her own party, and following her ouster John Major inherited a party openly divided between those

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for whom European integration represented an erosion of parliamentary sovereignty, and a second faction who traded such purist concerns for a pragmatic acceptance that membership as vital for Britain's long-term economic future.[1] For Labour, meanwhile, the trauma of the split of 1981, the formation of the Social Democratic Party, and a fear of being led from the hard left, pushed the party towards the centre ground, gradually it shed its opposition to Europe, and through the successive tenures of Neil Kinnock, John Smith and Tony Blair, it forged a new acceptance of Europe.

Secondly, these fluctuating party positions shaped, and were themselves shaped by, the shifting tide of public opinion. Just before the 1975 referendum, a Gallup poll found that 41 per cent would vote to leave the European Economic Community (EEC); this dropped to 22 per cent when people were then asked whether renegotiated terms of membership would alter their attitudes. Indeed, by March 1979, a MORI poll found that 60 per cent would now vote to leave the EEC— just four years after two-thirds of voters had backed staying in.[2] Yet as Thatcher engaged successfully with the EC in the mid-1980s, and the Labour Party too began to move in a more pro-Europe direction, opinion shifted. In 1987 the polls stood at 47 per cent in favour of membership to 39 per cent against. This trend was broadly maintained throughout the 1990s, with dips in support often brought about by periodic instances of tension between Britain and the EU, such as the BSE[3] crisis of 1996.

The upshot of all this was that by the last years of the twentieth century, both the Tories and Labour had adopted carefully calculated public positions on the EU in order to deal with internal divisions and lukewarm public approval. New Labour, which in opposition had ruthlessly capitalised on the Major government's handling of European policy, softened its approach upon its election in 1997. Mindful of the harm Europe had caused both the Conservatives and his own party in the 1980s, Tony Blair adopted a policy of 'utilitarian supranationalism',[4] engaging in constructive diplomacy with the EU while consciously downplaying its salience in the public arena. The Conservative Party, during its long period in opposition, learnt first to marginalise its eurosceptic wing, and subsequently to avoid attacking Labour's European policy. This strategy was shared by both parties, and was predicated on a belief that relations with the EU could be handled at an elite level, and were not an issue of which the average voter should develop a critical awareness. However – and this is the third thread – this had consequences for the nature of the public discourse on European integration. Granted, there had long been a simmering current of Euroscepticism in the public consciousness, but the strategy of clandestine engagement did little to foster an informed understanding of the pros and cons of EU membership. The press were complicit in this, engaging in 'destructive dissent' and scaremongering, with the EU portrayed as the origin of much inane and cumbersome regulation.[5] With only lukewarm public approval for, or interest in, European integration, and

1 See Anthony Forster (2002). *Euroscepticism and British politics*. London: Routledge.
2 Roger Mortimore (2016). 'Polling history: 40 years of British views on "in or out" of Europe', *The Conversation*. http://theconversation.com/polling-history-40-years-of-british-views-on-in-or-out-of-europe-61250. Accessed 4 Oct 2016.
3 On the background of the crisis, and its domestic impact, see Roman Gerodimos (2004). 'The UK BSE crisis as a failure of government', *Public Administration,* 82(4): 911-929.
4 Simon Bulmer (2008). 'New Labour, new European policy? Blair, Brown and utilitarian supranationalism', *Parliamentary Affairs* 61(4): 597–620.
5 Oliver Daddow (2012). 'The UK media and "Europe": from permissive consensus to destructive dissent', *International Affairs* 88(6): 1221. See also Nicholas Startin (2015). 'Have we reached a tipping point? The mainstreaming of Euroscepticism in the UK', *International Political Science Review* 36(3): 311–23.

the parties colluding to keep it off the political agenda, the media found little reason to offer detailed analysis – or actively to shape a positive narrative about the benefits of integration. Consequently, for example, a Eurobarometer poll in late 2015 showed the British public to be among the least knowledgeable on the EU, unable to answer questions such as whether Switzerland was a member.

Scene 2: The referendum

The referendum of 2016 emerged from this deep history. The proximate origins of the referendum have been dealt with elsewhere; rather, our concern is with how the events of April to July of 2016 bring these threads together.

The date of the referendum was announced in February 2016, and as soon as campaigning got under way, the Leave side worked to neutralise their opponents' argument, and dismissed their basic message – that Brexit would be costly and staying in was safer – as overly negative. They marshalled a number of simple and powerful messages, such as 'I want my country back', and 'Take back control'. Against this, Remain camp's appeals to economics, or lofty concepts such as 'pooled sovereignty' or 'transnational cooperation', came over as remote and arcane.[6] Leave were not afraid to support their slogans with statements which were at best inaccurate and at worst factually incorrect—for example, the frequently cited line that the UK sent £350 million a week to the EU, and that this sum could be used instead to fund the National Health Service (NHS). In response to those who criticised such figures, Leave merely derided the messengers, urging people not to trust politicians or establishment figures who warned of the dire consequences of Brexit.

The campaign groups cut across party lines, with each side featuring senior figures from Labour and the Conservatives. Many of the Conservative front bench backed Remain, but several prominent members of parliament (MPs) – including Michael Gove, Iain Duncan Smith, and Boris Johnson – campaigned for Leave. In the Labour Party, the picture was muddied by the fact that Jeremy Corbyn seemed reluctant to commit to Remain, refusing to share a platform with pro-European former leaders Tony Blair and Gordon Brown, and going on holiday during the closing stages of the campaign.[7] Several vocal MPs formed the nucleus of Labour Leave, while elsewhere in the party disagreements surfaced on the issue of free movement.

The Leave camp had an ally in much of the media, which largely came out in support of Brexit. A study of press coverage found that 41 per cent of newspaper articles covering the referendum were pro-Leave, compared to 27 per cent in favour of Remain; six of the nine national newspapers leaned towards Brexit, with the strongest positions coming from the *Daily Express*, the *Daily Mail* and the *Sun*. Considering their readership, the study also found that the most avowedly Remain publications—the *Guardian* and the *Financial Times*—had the lowest reach, with the *Daily Mail* and the *Sun* at the other end of the spectrum.[8]

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[6] Rafael Behr (2016). 'How Remain failed: the inside story of a doomed campaign', *Guardian*. https://www.theguardian.com/politics/2016/jul/05/how-remain-failed-inside-story-doomed-campaign. Accessed 26 Oct 2016.

[7] Paul Waugh (2016). 'Jeremy Corbyn allies "sabotaged" Labour's in campaign on the EU referendum, critics claimed', *Huffpost Politics*. http://www.huffingtonpost.co.uk/entry/jeremy-corbyn-allies-sabotaged-labour-in-campaign-and-fuelled-brexit_uk_576eb1b5e4b0d2571149bb1f. Accessed 26 Oct 2016.

[8] David A. L. Levy, Billur Aslan and Diego Bironzo (2016). 'UK press coverage of the EU referendum', *University of Oxford/Reuters Institute for the Study of Journalism*. http://reutersinstitute.politics.ox.ac.uk/sites/default/files/UK%20Press%20Coverage%20of%20the%20EU%20Referendum_0.pdf. Accessed 26 Oct 2016.

These divisions were reflected in the result of the referendum, and the most obvious breakdown of voting patterns was geographic, with all of Scotland voting Remain, and in England, every region apart from London voting Leave. The vote share in Wales almost exactly matched the overall national result (52.5 per cent Leave to 47.5 per cent Remain), while Northern Ireland came out in favour of Remain (at 56 per cent). The share of the Leave vote was highest in areas where average levels of schooling were low; conversely, all 20 of the 'most educated' local authority areas in the UK voted Remain. Not surprisingly, similar patterns were evident for occupational background: areas with large proportions working in professional occupations registered strong Remain votes, as did those with higher levels of median hourly pay.[9] The Leave vote was higher in areas with large proportions of the population over 65, and lower where the population was younger. Given the prominence of immigration during the campaign, it is not surprising that this too featured in the result – although with some odd, counter-intuitive effects. For example, South Staffordshire recorded among the highest Leave votes (at 78 per cent), yet fewer than 1 per cent of its population was born outside the UK This trend was repeated on a large scale: of the 20 areas in the UK with the lowest level of EU migration, 15 voted Leave; of the 20 with the highest, 18 voted Remain.[10] Exposure to large numbers of EU migrants seemed to push voters towards Remain, and instead, Leave votes were closely connected to the rate of change of EU migration: those areas which had seen a rapid increase in migrants arriving from the rest of Europe— such as Redditch or Lincoln—voted strongly for Leave.[11]

But cutting through all these patterns a narrative began to emerge linking the Brexit vote to identity. Of those who saw themselves as 'equally British and English' the vote was evenly split between Leave and Remain; but 79 per cent of those who identified as 'English only' voted Leave. At the other end of the scale, those who were 'British not English' voted—by 60 per cent to 40 per cent—for Remain. Those who saw causes such as multiculturalism, feminism, environmentalism and globalisation as forces for good voted for Remain, while those holding negative perceptions of these voted by a large majority for Leave.[12] For many Leave voters, the decision was based on sovereignty, as they agreed with the principle that the UK should be able to take its own decisions; behind this came a desire to reduce immigration, and a fear that European integration was out of control. Remain voters, meanwhile, sidelined concerns about sovereignty and immigration in favour of practical economic issues: the most common reason given was that the risks (to the economy, jobs and prices) of leaving were too great.

The net result of all this seems to be that Leave won because it offered a clear, simple message to those Britons who felt they had been left behind by the rapid, but regionally uneven, economic development since the eastern enlargement, if not since Maastricht. European integration might have benefited Britain as

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9 Matthew Goodwin and Oliver Heath (2016). 'The 2016 referendum, Brexit and the left behind: an aggregate-level analysis of the result', *Political Quarterly* 87(3): 323–32. See also Stephen Clarke and Matthew Whittaker (2016). 'The importance of place: explaining the characteristics under- pinning the Brexit vote across different parts of the UK', *Resolution Foundation*. http://www.resolutionfoundation.org/publications/the-important-of-place-explaining-the-characteristics-underpinning-the-brexit-vote-across-different-parts-of-the-uk. Accessed 26 Oct 2016.

10 Monica Langella and Alan Manning (2016). 'Who voted Leave: the characteristics of individuals mattered, but so did those of local areas', *LSE British Politics and Policy blog*. http://blogs.lse.ac.uk/politicsandpolicy/explaining-the-vote-for-brexit. Accessed 26 Oct 2016.

11 Clarke and Whittaker, 'The importance of place'.

12 Lord Ashcroft's polling data can be found on his website at http://lordashcroftpolls.com/2016/06/how-the-united-kingdom-voted-and-why/#more-14746. Accessed 26 Oct 2016.

a whole, but had also left great swathes of the country behind; and on top of this, decades of neglect (and sometimes intervention) by central government had failed to revitalise previously prosperous areas where heavy industries had been shut down: in March 2016, *The Economist* had described Blackpool as a 'town they forgot to close down', a sad underside to Osborne's metropolitan revolution.[13] For people in these areas, the political establishment offered little, and the referendum gave them a chance to be heard. The Remain campaign failed because it tried to press home negative economic arguments, but also largely because it struggled to forge a positive narrative in favour of continued membership. In turn, Leave's refusal to engage with the details of the economic arguments was a move that was both brutally effective, and redolent of the lightweight and superficial obsession of the British media with the legalistic technicalities of membership, and redolent too of the failure of the British public to form an emotional engagement with the subtle opportunities offered by European membership. If the economic messages got through at all, voters either dismissed them as 'Project Fear', or were willing to bear a little economic pain for the greater benefit of regaining sovereignty and control.[14] The result was that the public discourse on Brexit was steered away from a serious tackling of thorny details, and towards a breezy optimism and utterly unfounded expectations.

To round of Act I, then, the roots of the current situation are in place: the parties were internally divided over EU membership, and the country was shorn almost in half. The tenor of the public debate during the campaign was set by Leave's strategy of actively shutting down discussion of the practicalities of how Brexit could be delivered, which in turn meant that there was precious little engagement with such difficult questions.

Act II: Brexit present
Scene 1: June 2016 – March 2017

The second act opens with the almost farcical internal power struggle following David Cameron's resignation on the 24th June. The heavyweights of the Leave campaign – Gove and Johnson – and a distinct lightweight in Andrea Leadsom, jostled for dominance, knifed each other in the back and were left by the side of the road as Theresa May slid into Number 10. She had been Home Secretary in the previous government, and had a built a reputation for reliable and unglamorous efficiency, and now, newly installed as Prime Minister (PM), she was charged with delivering Brexit. The ballot paper had only set out a binary choice, and Leave had been studiously bland when it came to offering actual detail about what form Brexit should take, but over the campaign two broad options had coalesced. At the basic minimum, Brexit would see the UK leaving the EU's institutions, no longer sending members to the Parliament, nor having representation in the Council, nor contributing a Commissioner or any judges. Extending this further gave 'hard Brexit', whereby the UK would also leave the Single Market and the Customs Union; and at the other end of the spectrum was 'soft Brexit', under which the UK would leave the political institutions but remain – like Norway, perhaps – inside the trading arrangements.

[13] 'A coastal town they forgot to close down', *The Economist*, 19 March 2016. http://www.economist.com/news/britain/21695053-sad-underside-george-osbornes-metropolitan-revolution-coastal-town-they-forgot-close. Accessed 26 Oct 2016.

[14] On this point, see Oliver Daddow (2016). 'Project Fear is the legacy of decades of Euroscepticism: dare Cameron make a positive case for the EU?', *LSE British Politics and Policy blog*. http://blogs.lse.ac.uk/politicsandpolicy/project-fear-is-the-legacy-of-decades-of-Euroscepticism-dare-cameron-make-a-positive-case-for-the-eu. Accessed 26 Oct 2016.

The difficulty in choosing between them lay in the trade-offs inherent in any position. For example, a 'soft Brexit' would require the acceptance of some form of freedom of movement, and the acceptance of the jurisdiction of the European Court of Justice (ECJ). But both had featured prominently during the referendum campaign: recall the many promises to take control of the borders, or to restore the sovereignty of British courts and British law. Conversely, a 'hard Brexit' would avoid these awkward costs, but would impose a severe shock on the UK economy, and, following the UK's exit from the Single Market, the border between Northern Ireland and the Republic would need to be reimposed.

Having taken over from David Cameron, Theresa May set about selecting the model herself. One could say that her approach was a continuation of her *modus operandi* from the Home Office, where she liked to hunker down, take counsel from a small band of elite advisors, and make up her own mind – with little room for external influence. One could say that she was keenly aware of the resonance of the immigration issue during the campaign, and so feared a reprisal from the Tory right – and beyond – were she to opt for anything less than a full, hard Brexit. One might suggest that her loathing of supranational judicial mechanisms dated back to her time in the Home Office, where she battled the European Court of Human Rights; or one might suggest that she – as a Remain voter – felt a need to signal her credibility as PM to the euroscpetic wing of her party. Likely it was a blend of all of these; but the outcome was that the version which took shape over this period was hard, sudden and jolting Brexit. In a keynote speech at Lancaster House in January 2017 she set out what became known as her 'red lines': the UK would regain control of its immigration policy; it would leave the jurisdiction of the ECJ, and the EU's body of regulations; it would pursue its own, independent trade policy; leave the Common Agricultural and Fisheries Policies; and stop paying into the EU's budget.

The formation of this stance was decidedly private, and she and her ministers – chiefly David Davis, at the newly-created Department for Exiting the EU – gave little detail of their intentions. There was to be no 'running commentary' on Brexit, and various attempts at scrutiny of the government's position – by select committees, by journalists, and by the public – were knocked back.[15] The usual response from the government was that to give out information would be to show the UK's hand to the EU, but critical observers pointed out that perhaps the more likely scenario was that the government was simply struggling to master the complexity of the process or to form any coherent positions. In the spirit of this clandestine activity the government had hoped to be able to trigger Article 50, and begin the process of leaving the EU, without consulting Parliament, but it suffered a defeat in the Courts in early January, and was forced to gain Parliamentary approval. The vote was duly carried by a majority of 384 votes on 1st February, but a fifth of Labour MPs – including 13 members of the shadow cabinet – defied the leadership and voted against the motion. On the 29th March, the UK's Permanent Representative at the EU, Sir Tim Barrow, delivered a letter from Theresa May invoking Article 50.

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[15] Vincenzo Scarpetta (2016). 'Steering clear of a running commentary on Brexit is the only strategy that makes sense at this stage', *Open Europe*. https://openeurope.org.uk/impact/for-the-uk-government-steering-clear-of-a-running-commentary-on-brexit-makes-sense-at-this-stage. Accessed 30 Nov 2016.

Scene 2: April – December 2017

So now the clock had started, and the business of leaving the EU was under way. Weeks into the process, however, on 18th April, Theresa May called a general election. The purpose, as she explained that morning, was to solidify a parliamentary majority, to gain a public mandate for her Brexit strategy, and to present a show of unity to the EU. Two sub-plots were also evident. First, she saw this as an opportunity to crush Jeremy Corbyn's Labour party, over whom the Conservatives enjoyed around a 20-point lead at the time. She hoped that by converting this into a three-figure parliamentary majority, she would have a more straightforward time passing the legislation required to implement Brexit; and also, having achieved Brexit, she could then use the remainder of her term to pursue policy goals related to her social agenda. Second, it is possible that she privately expected the economic impacts of Brexit to bite in the near future, and did not want to be in a position of fighting a general election campaign around 2018 or '19, by which time the electorate might have sensed that Brexit was not going well and would look to punish the Conservatives. By this logic, again, it made sense to lock in a five-year term, running from 2017 to 2022, and weather any economic storms that hit during the period.

To make sense of the story we should skip to the election result itself, and then work backwards through the campaigns. The election was a catastrophe for May: rather than convert this 20-point lead into a three-figure majority, she saw it whittled down to only two points, and the working majority she had going into the election was pegged back into an overall minority. For the second time in a decade the UK had a hung parliament, and the final seat count put the Conservatives on 318, with the combination of the opposition parties on 322.

Now to backtrack. Four explanations present themselves. The first is to see the enormous strategic error by Conservative HQ in the conduct of the campaign. This was a 'Brexit election' – it was meant to be all about Brexit, and about who the British people could trust to deliver it, and the assumption was that the British public would dutifully put all other policy concerns aside and concentrate on this instead. Yet for all that, the Tory party continued its baseline policy of revealing nothing of any substance about what Brexit would be: nothing about how the trade-offs would be reconciled, nor about how the negotiations would be approached. They left the whole of the rest of the policy battleground up for grabs: the NHS, social care, education, defence, taxation, and so on; and to no great surprise, the parts of the manifesto dealing with these were equally thin, containing little beyond platitudes and little by way of concrete costings. When the document was launched it was found to contain several policies – such as the now infamous 'dementia tax' – which should never have survived even the most cursory of internal reviews. Against this, Labour actually managed to muster some good policies, or at least, some policies which were popular and were presentable – perhaps not surprising, given that the party tends to dominate large parts of the social policy landscape.

The second great problem concerned the personalities at play here. From the very morning of the announcement, this was framed as an almost presidential election between two leaders and two leadership styles: Theresa May and her ability to deliver 'strong and stable government', against Jeremy Corbyn and his 'coalition of chaos.' The branding and logos at the first few media appearances barely made any reference to the 'Conservatives', instead trumpeting 'Team May.' But recall that Theresa May had come to power without an election, and the public knew little of her beyond her reputation as a stodgy,

effective Home Secretary. The problem now was, as Nigel Fararge put it, the more the public saw of May, the less they liked.[16] In her media appearances she appeared wooden, given to trotting out side-bites and dodging questions; and as the campaign wore on this gave way to an angry, snide persona, given to glaring menacingly at journalists. This meant the press events and media appearances became an issue in themselves, rather than an opportunity to push her message: although she claimed to be touring the country 'speaking to ordinary people', in reality these events were carefully stage-managed and clinical in their setting. She rarely took unscripted questions, spoke only to friendly journalists, and refused to appear at the leaders' debates, held on the UK's main TV channels, claiming that she was busy preparing for Brexit (although, naturally, she wouldn't let on exactly what she was doing).

The third part of the explanation was the terrorist incidents in Manchester in late May and London, in early June. Labour were able to capitalise on these events, in a roundabout way, by demonstrating that it had been Theresa May, as Home Secretary, who had pushed through cuts to front-line policing. These were significant blows to be landing, especially given that this was an election all about competence, and about personality. The gap between the two parties had been fluctuating in the weeks before these two events; afterwards, they settled on a more or less flat path, with the two parties often separated only by the margin of statistical error present in the survey data.

So we have a strategic blunder on Brexit and the manifesto, an awkward and unpopular leader, and the effect of two tragedies in the space of a matter of weeks. But cutting through all of this was the fourth part, an enormous under-estimation of Jeremy Corbyn. It was already clear that he was a popular figure with young voters, and among the disaffected public sector workers left battered by seven years of austerity: his campaign rallies were regularly attended by thousands, and stood in stark contrast to May's carefully-orchestrated appearances. But the Tories, alongside many pundits, were highly sceptical that this popularity could be converted into actual electoral turnout, placing their confidence in the apparent truism of British politics that the young do not vote. Only this time, it seems they did, as turnout in the two bottom age-ranges (18-24 and 24-35) rose, and Labour won these over the Tories hands down.[17]

The election had effectively paused the Brexit process on the home front, since the civil service were prevented from carrying out any meaningful work under purdah rules. After the results came in there was further delay as the Conservatives forged a confidence-and-supply pact with the Democratic Unionist Party (DUP), who had themselves been staunchly pro-Brexit during the referendum campaign. Once the new government was in place the process could begin in earnest, and on 19th June David Davis met the EU chief negotiator, Michel Barnier, to formally open the talks. Despite some initial objections from Davis, the two sides settled on an overall sequence, whereby discussion could only take place on a future trading relationship after agreement had been reached on three issues: the rights of EU citizens living in the UK (and vice versa), the settling of the UK's outstanding financial commitments, and the future of the border between Northern Ireland and the Republic of Ireland. Also agreed on were the more precise details on the

[16] David Singleton (2017). 'May manages to make an enemy of The Economist… and Nigel Farage', *Total Politics*. https://www.totalpolitics.com/articles/news/may-manages-make-enemy-economist…-and-nigel-farage. Accessed 20 Aug 2017.
[17] Detailed analysis of the results is available from http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7979

schedule of the talks, which was constructed to allow Barnier frequent opportunities to report back to the European Council.

From there, though, little progress was made over the summer and autumn. This was partly down to the customary emptying of Brussels during the holiday season, but it also arose from a distinct lack of a clearly-articulated position from the UK government on the three 'Phase 1' items. Referring to the prospect of the UK paying a divorce bill, Boris Johnson told the Commons that the EU could 'go whistle', but this sentiment sat awkwardly alongside the acceptance from the Philip Hammond, and thus from the Treasury, that the UK would pay. On citizens' rights, ideas were passed back and forth through the summer between the two negotiating teams, but disagreements over the ongoing role of the ECJ in safeguarding those rights proved stubborn. And finally – in a portent of what was to almost derail proceedings in the winter – the UK government seemed unable to propose any meaningful plans for Northern Ireland: position papers spoke vaguely of 'frictionless borders', and of technological solutions to the problem of customs checks.

The frustration of all parties was laid bare in the awkward press conferences rounding off the autumn talks. It seemed a fresh impetus was needed, and so on 22nd September Theresa May gave a speech in the Italian city of Florence. Where her earlier address spoke of 'red lines', this one struck a more positive tone, and in its opening lines sought to assuage concerns that the UK somehow hoped to use to Brexit to bring about the breakup of the EU. 'The EU is beginning a new chapter in the story of its development', she said, '[and] we don't want to stand in the way of that.'[18] Beyond this talk of strong cooperation between a reforming EU and an independent UK, May also used the speech to signal some changes in the UK's position, but these were, in truth, a mixed bag. Most significant was her announcement that the UK would seek an 'implementation period', running for two years from the end of the Article 50 process and allowing all parties to establish the many legal and institutional precursors to the new trading relationship. Crucially, the period was presented as a continuation of the *status quo*, meaning that the UK would continue to abide by existing EU rules – including the free movement of people and the jurisdiction of the ECJ – in return for business-as-usual access to the Single Market. On the issue of money, she was clear that the UK would 'honour commitments it has made during the period of our membership.' She also moved to clarify the rights of EU citizens in the UK, promising to write protections into the terms of the exit treaty, thereby putting them beyond the reach of MPs, and at the same time accepting the ongoing role of the ECJ in settling disputes over those rights. But on the question of the Irish border nothing new was forthcoming – simply a re-statement of the usual pledge to avoid a hard border, and likewise, on the issue of the UK's future trading relationship with the EU, she reiterated a now familiar line that the UK seek a bespoke deal, rather than accept one based on the relationship between the EU and either Norway or Canada (respectively the 'high access / high cost' and 'low access / low cost' models). The only area of movement on this front was on the question of the legal oversight of this relationship, where she accepted a 'strong and appropriate dispute resolution mechanism' would be needed, involving formal cooperation between the ECJ and British courts.

The Florence speech was also intended for domestic

[18] The full text of the speech is available at https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu

audiences, and came in middle of the conference season. The Liberal Democrats went first, and, after some internal dispute, backed a call for the terms of the Brexit deal to be put country in a second referendum. As week later, in Brighton, the Labour Party conference also looked set to be marked by a falling out over Brexit, until a poll of the delegates present generated an agenda for discussion which omitted the issue altogether. Thus the rumbling discord between the leadership – particularly Jeremy Corbyn and John McDonnell – and pro-Europeans was kept private, and the conference backed a brief document put together in response to accusations that the party had deliberately avoided engaging with the issue. The statement continued Labour's ambiguous, verging on incoherent, position on Brexit: the party would seek a 'tariff- and impediment-free trading relationship with the EU', and would oppose any solution that led to a hard border with Ireland, but little detail on how either would be achieved was forthcoming. Jeremy Corbyn's speech sought to deflect attention from the party's travails and instead attacked the Tories' Brexit strategy, accusing it of being divisive and shambolic.

Among the domestic audiences, though, the most important was May's own party. The lack of progress in the negotiations stemmed from Tory divisions – from Cabinet to Parliamentary party to grassroots membership – over Brexit. On 15th September Boris Johnson had published a 4,000-word 'alternative manifesto'[19] in *The Daily Telegraph*, and his intervention was significant not in the detail it gave on how Brexit should be delivered – opting instead for glib platitudes and a repeat of the now-infamous £350m promise – but for what it showed of the author's naked ambition for leadership. The divisions had afflicted the party since the very beginning of May's premiership had been kept behind a paper-thin veneer of unity; yet here was the Foreign Secretary opening challenging the authority of his Prime Minister. A week after the Florence speech he doubled down, using an interview with *The Sun* to insist that the transition period should last 'not a second longer' than two years.[20]

In this climate of open dissent, Theresa May took to the podium at the Tory conference. She was apologetic for the election debacle, re-stated the key points of her Florence speech, and set out a range of more business-as-usual policies for the government: a reform to the system of university tuition fees, £2bn allocated to fund the building of social housing, and a cap on energy prices. For a speech that aimed to reassert the force of her leadership, though, it was a disaster. She was first interrupted by a prankster wielding a P45 (the tax document on receives at the termination of one's employment), and then by a persistent cough; soon afterwards, the backdrop behind her began to fall apart, with letters dropping from the words 'Building a country that works for everyone' like an apt visual metaphor for her leadership.

The Prime Minister's performance at the conference may have been disappointing, but the Florence speech did succeed in unblocking the negotiations. The EU now had a clearer sense of the government's priorities and negotiating position on the three 'big ticket' items, and so the focus of the talks moved onto the question of the border with Ireland, which was seen as the most problematic of the three. Formally the talks were between the European Commission (acting on behalf of the Council) and the British government, but

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[19] Boris Johnson (2017). 'My vision for a bold, thriving Britain enabled by Brexit', *Daily Telegraph*. http://www.telegraph.co.uk/politics/2017/09/15/boris-johnson-vision-bold-thriving-britain-enabled-brexit/. Accessed 20 Oct 2017.

[20] Tom Newton Dunn (2017). 'BREXY BEAST Boris Johnson reveals his four Brexit "red lines" for Theresa May', *The Sun*. https://www.thesun.co.uk/news/4580334/boris-johnson-pm-brexit-red-lines/. Accessed 20 Oct 2017.

on this question the Irish government was brought in, giving Dublin a veto over any deal which would lead to the return of a hard border.

By early December it appeared that a solution had been reached. After Brexit, Northern Ireland and the Republic would maintain two parallel, but distinct, regulatory regimes covering the many areas of cross-border trade (agricultural produce, manufactured goods, energy, and so on), and this would negate the need for a hard border. The essence of the solution was captured in the phrase 'regulatory alignment', suggesting that Northern Ireland would remain in step with the Single Market – including, naturally, the Republic of Ireland. On 4th December, Theresa May travelled to Brussels for a working lunch with Jean-Claude Juncker, and everything seemed set for an official announcement. However, while dining she was called away to take a call from the DUP, who refused to endorse the proposal. They could not allow any arrangement to come to pass which meant that Northern Ireland left the EU on different terms to Great Britain, and it appeared that they had not been consulted on the draft text of the agreement. The following day, David Davis confused matters further by suggesting that, actually, the *whole* of the UK would stay aligned with the Single Market's regulatory framework, stoking tensions with that wing of the party – of which Boris Johnson was a champion – who sought to use Brexit to launch a wave of deregulation.

All this took place a mere 10 days before the December meeting of the European Council, which was the latest opportunity to move to the second phase, while leaving enough time for the rest of the Article 50 process to work its course. After a week of frantic discussions, a new agreement was reached: rather than a reference to 'regulatory alignment', there was now a pledge that 'no new regulatory barriers' would come about. At a press conference in the early hours of the 8th December, Theresa May and Jean-Claude Juncker published a joint report, which summarised the agreements reached on each of the three issues.[21] On the basis of this deal, Juncker was able to advise the European Council that sufficient progress had been made, and so, at the summit on the 14th and 15th December, the Council duly approved the transition to the next phase.

Two more brief episodes are worthy of note, both concerning the stormy relationship between the government and Parliament. First, the government, and in particular the Brexit department, had long insisted that it was conducting detailed research into the possible impacts of Brexit on the UK economy, but that it needed to be kept private since its release would undermine the UK's negotiating position. In December 2016 Davis had said that his department was working on 57 sets of analysis; in October 2017 he said that these went into 'excruciating detail'; and then, appearing before a Parliamentary scrutiny committee in December, he admitted that they did not exist.[22] A document was grudgingly released purporting to be the department's analysis, but it was merely a lengthy synthesis of material already in the public domain, and contained little by way of impact assessments. Second, the day before the European Council summit, the government suffered a defeat in the Commons in its attempt to pass the EU Withdrawal Bill. This contained provisions for ministers to begin implementing Brexit as soon as an agreement with

[21] The full text is available at https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf
[22] Jim Pickard (2017). 'Brexit secretary admits there are no impact papers', *Financial Times*. https://www.ft.com/content/8ca38822-da75-11e7-a039-c64b1c09b482. Accessed 15 December 2017.

the EU had been reached, bypassing Parliament and giving little opportunity for oversight. An amendment was tabled from the Conservative benches – by former Attorney General Dominic Grieve – to prevent this, adding to the draft bill a requirement for Parliament to pass legislation approving, and possibly amending, the terms of the deal before implementation could begin. The amendment was passed by four votes, with eleven Conservative MPs rebelling against their party.

So Act II ends with the closing of 2017. Public opinion on Brexit is as divided, and as inconclusive, as ever, as shown by the voting patterns in the general election and the numerous polls conducted in its aftermath. The political parties, with the exception of the Liberal Democrats, are divided, unable to muster clear positions on what form Brexit should take, and how it should be delivered. Theresa May's personal style of leadership was exposed, and blunted, by the fiasco of the election; she now remains in power only because the Conservative Party does not dare risk further chaos, or public opprobrium, by toppling her. In the resulting leadership vacuum, the government is unable to articulate clear priorities or preferences; indeed, there was no discussion on the future trading relationship with the EU in a full sitting of the Cabinet until December 2017. And in all this, there is obviously still little engagement with the complexities of the next stage: the government still officially believes that a new trade deal can be agreed by March 2019, to be 'implemented' during the two year period.

Act III: Brexit future

In lieu of any concrete predictions, the third act instead offers a précis of the current state of affairs, an outline of the process as it will unfold in 2018, and a tentative forecast about the type of deal which will emerge.

First, obviously, the parties remain divided. Both have had rebellious factions voting against the party line: Labour in the Article 50 vote in February, and the Conservatives in the amendments to the EU Withdrawal Bill, for example. The Labour Party has held itself to a delicate non-position on Brexit, perhaps preferring not to commit to anything concrete that might have to be delivered upon if they happen to take power in the event of another General Election. The Conservatives remain hostage to their eurosceptic hard right, and indeed to the DUP, both of whom are driving the party towards a hard and rapid Brexit. Yet the Government's position in Parliament is fragile, as it is unable to muster a clear and reliable majority in support of such plans. Secondly, public opinion does not appear to be shifting significantly. Notwithstanding some minor expressions of regret detected by a few polls, the public is as set on Brexit as it was in the summer of 2016: surveys report strikingly similar proportions in favour and against.

And so we turn to the consequences of the weak engagement with the practical details of Brexit, epitomised by the gulf between the Government and the EU. In as much as it has ever given an indication of its position, the Government has long insisted that it intends to seek a 'bespoke' trading arrangement with the EU. This is predicated upon a key element of the Leave campaign's argument, namely that the EU needs the UK more than *vice versa*, and so the UK will be able to use this leverage to craft a brand new form of relationship, rather than one based on existing templates. Such a relationship would see the UK leaving all the political institutions, while enabling it to continue having access to the Single Market – but without being beholden to the EU's regulatory regime nor the ECJ's jurisdiction. This may have been flexed slightly around the edges – with talk of implementation periods, for example – but nonetheless it now forms the core of the Government's position.

The EU sees matters rather differently. The starting point is that trading relationships cannot be 'bespoke': they much conform to one of a small set of templates. There is membership of the Single Market via the European Economic Area (EEA), akin to the arrangement currently enjoyed by Norway, which would enable the UK to keep many of its current its current trading arrangements in place, including, crucially, the export of services; but it would require the UK to adopt all EU regulations, accept freedom of movement, and pay for access. Norway and Iceland would likely object to the UK joining their small club, and anyway, Theresa May has ruled this option out (chiefly because of the costs it involves in terms of regulatory sovereignty). Alternatively, there is a 'normal' trading agreement, such as the EU has recently concluded with Canada, which would enable regulatory divergence and an end to freedom of movement, but would not cover services.

It is important to realise the roots of the EU's insistence on these stark alternatives. Granted, the EU must keep half an eye on other recalcitrant Member States who fancy pushing for a renegotiation of their own position on a more favourable, individually-tailored basis. But the EU must also seek to maintain the integrity of the many trading relationships with other third countries – which is precisely what the UK will be after Brexit. It cannot allow the UK to parlay its former membership into a new, arm's-length trade deal with better access, or for less cost, than is currently enjoyed by other non-members.

Nevertheless, the UK appears to be pursuing a set of irreconcilable demands: a bespoke deal which allows the UK to leave the Single Market, and which somehow negates the need for a hard border in Ireland. The roots of situation lie in the persistent lack of engagement with the trade-offs at play here. This started with the weakness of the debate during the referendum campaign, when attempts to ask detailed questions about implementation were batted away by Leave. Then, once Brexit had become Government policy after the results of the Referendum and the General Election, there was still little progress on solidifying these details because of the confluence of several factors: Theresa May's personalised style of leadership before the election; the preparation time lost during the purdah in April; May's weak position after the election; and the Government's desire to isolate itself from Parliamentary and public scrutiny. The Government's choice of Brexit – indeed, *any* choice of Brexit – entails accepting trade-offs and thereby disappointing at least one constituency (be it the de-regulatory hard right, the business community, or the DUP), but leadership has lacked the authority to do so.

Thus, 2018 will be the year when these trade-offs are confronted; but I suspect the EU will be the one taking the lead. Neither it nor the UK wants a disorderly, cliff-edge Brexit, but with the parties, and public opinion, being so inconsistent on key issues, or on the fundamental trade-offs, the EU will step up and offer a solution which, given the time available, the UK will have to accept. This brings us to the timetable for the coming year, and to a tentative forecast about the deal which will be reached.

First, the joint report which enabled the transition to the second phase of the talks must be written up into a legal document forming the basis of the eventual withdrawal agreement. This means that the pledges that the UK gave – particularly on the Irish border – will be made legally binding, and the Council has said that it will monitor proceedings carefully to ensure that there is no backsliding. Next, the Council document from the December summit set out the broad terms for the 'transition period', which will run from Brexit day until 31st December 2020. During

this time the UK will continue to implement the whole of the *acquis*: that is, it will continue to abide by all the EU's regulations, including any new ones which arise; it will remain under the jurisdiction of the ECJ; and it will continue to participate in the Single Market and the Customs Union, and to comply with EU trade policy. Discussions on the specific details of this arrangement began in January 2018, and in March, a new negotiating mandate will be given to the Commission by the Council. This will allow talks to move on to setting the broad political outlines of the future relationship – but the EU has made it clear that concrete talks on a new trade deal cannot begin until *after* Brexit day. These talks will run until October 2018, when the ratification process begins, involving votes on the proposals in the legislatures of the Member States, plus the European Parliament.

In other words, the EU has already begun to impose constraints into the process to circumvent the UK Government's persistent ambiguity and indecisiveness. The period following Brexit will indeed be a transition, not an 'implementation period' (as Theresa May sought to label it), during which an already-agreed-upon deal is put in place, and elements of the obligations of membership are 'switched off' one at a time. Rather, it will be used to keep the UK in the economic and judicial (though not the political) mechanisms of the EU, while a new trading relationship is established. To prepare for the eventuality of the UK Government failing to establish a clear position, the EU has begun work on a Canada-style relationship, and drafting the outlines of a long-term institutional structure to oversee the implementation of all the components: the transition period, judicial cooperation, the policing of the border with Ireland (hard or otherwise), and so on.

It is these long-term institutional structures which give an indication of the type of future relationship the EU has in mind, and which underpin the tentative forecast. For all the insistence on a deal based on an off-the-shelf model, the EU is also keen to establish a long-term strategic partnership with the UK; the UK Government, in turn, has always said it wants to remain close to the EU in many areas of policy. The best way to facilitate such an arrangement – and where the EU seems to be going with its planning – is via an association agreement, similar to that it concluded with Ukraine in 2014. This would be based on a trade deal covering goods – as per the Canada model – which could be supplemented with bilateral investment partnerships. The legal framework of such an arrangement would be overseen by a joint committee bringing together EU and UK ministers and officials, which would be tasked with ensuring that regulations in the two markets remained aligned in their intent and outcome, if not in their content and approach. This would be of particular importance on the island of Ireland, where, for example, formal cooperation will be vital in sustaining the shared energy market, and the future of cross-border trade. The arrangement could be extended to include cooperation on matters such as foreign policy and security, meaning that the UK would retain access to vital intelligence needed to combat terrorism and organised crime.

There are difficulties ahead, however. Lurking behind the Government's position is a tension between two *desiderata*, both of which have their roots in pledges made by the Leave side during the referendum campaign: that the economic impact of Brexit will be minimised by maintaining strong links with the EU, and access to the Single Market; and that the UK will be able to use its newly-restored sovereignty to develop its *own* regulatory frameworks. Achieving both is impossible, since if regulatory sovereignty results in a divergence from the Single Market's rules, then access will be restricted and the economy will

duly suffer. Until the Government establishes which of these it wants to prioritise, the EU must press ahead with the Canada model and hope to minimise disruption. Secondly, even if this issue is resolved, it is likely that elements of the Cabinet – and certainly the wider Conservative Party – will object to the high degree of institutional cooperation envisaged by the EU. After all, if the UK ends up being under the jurisdiction of the ECJ in all but name, then one of the key red lines will have been erased. Equally, it is possible that we will see reticence from the ECJ: it previously pushed EFTA into establishing its own (quasi-)court, rather than sharing institutional power. And finally, the arrangement requires that the UK establish a set of independent regulators which can work in partnership with their EU equivalents in overseeing the implementation of the new rules-based framework. It would be important that such bodies could sue the UK Government if it did not implement the rules adequately or fairly, and this would sit awkwardly with the de-regulatory factions of the Conservative Party.

In summary then, 2018 looks to be the year in which the UK government is confronted with its inability to construct a coherent negotiating request for the future relationship – the key protagonists are personally too invested in their red lines and absent a clear signal from the electorate are disinclined to change their minds. Since Theresa May cannot command obedience from her cabinet, we will see that the equation can only be solved with outside intervention, in the form of proposals from the EU. This should not be a surprise; after all, the EU set the agenda for the first phase of negotiation according to their priorities and led the UK to December's conclusion.