

May's Rocky Road Ahead: Why Brexit May Not Happen



by Brendan Donnelly

**FRIEDRICH
EBERT** 
STIFTUNG

Social Europe Occasional Paper

No.12
December
2016

INTRODUCTION

For many, the momentum behind Brexit has seemed unstoppable since the referendum of 23rd June. The long-running civil war within the Conservative Party on Europe appears to have been won definitively by its most radically Eurosceptic wing. A united Party will, therefore, support Theresa May's desire to trigger Article 50 of the Lisbon Treaty by the end of March 2017. The Labour Party, chastened by unexpectedly widespread votes for Brexit among its traditional supporters, has said that it will not oppose the now famous Article's invocation. Under such a timetable, the UK will "normally" cease to be an EU member in early 2019.

It would, however, be premature to argue that British withdrawal by then is thus a foregone conclusion. May and her colleagues would do well to remember that "normality" has been a poor guide to the course of British politics over the past 12 months, particularly where Europe is concerned. The early days of December 2016 provided three vivid illustrations: the unexpected acknowledgement by David Davis, the Minister for Brexit, that the UK might need to pay an entrance fee for access to the European single market; the extraordinary victory for the Liberal Democrats at a by-election where European issues were to the fore; the opening sessions of the Supreme Court hearings about the right or otherwise of the British government to invoke Article 50 without Parliamentary sanction.

Each of these events could be a stumbling-block at least on the otherwise smooth path towards Brexit. Cumulatively, they illuminate the political and practical contradictions within the entire project. They point towards a potential combination of circumstances in which the proclaimed divorce between the UK and the EU may not take place after all.

PAYING FOR ACCESS TO THE SINGLE MARKET

Davis's remarks are particularly striking, both in content and source. Those campaigning for Brexit in the referendum repeatedly argued that the UK would endure no negative economic consequences from leaving the EU. Boris Johnson's remark that outside the EU the UK could "have its cake and eat it" captured this attitude. Much was made of the deficit in traded goods that the UK exhibits with the EU-27. When confronted with British determination to leave, pro-Brexit campaigners argued, the UK's trading partners would recognize the economic logic of maintaining the closest possible commercial ties with the important British market. Angela Merkel in particular would be eager to protect exports of German cars there.

Davis's remarks about possible British payments for access to the single market represent a first, perhaps reluctant recognition of the fundamental inaccuracy of such expectations. Far from advocating concessions under pressure from German car-makers, Merkel has been vocal in stressing that any long-term arrangement with the UK would need to be demonstrably inferior to those in force between EU member states. Unsurprisingly, this unwillingness by her and her colleagues to conform to British expectations has been widely presented in the UK media as a spiteful desire to punish Britain for the 23rd June result, putting pro-integration political correctness above economic pragmatism. Both Johnson and Liam Fox, the Minister for International Trade, have been oft-quoted contributors to this self-serving misrepresentation.

Against this background, it is quite remarkable that Davis should now be striking a more realistic note. In September, he told the House of Commons that the UK would probably be leaving the single European market, because the terms for remaining within it would be unacceptable. As recently as 10th October, he told MPs "the balance of negotiating

advantage is incredibly heavily stacked our way.” Neither of these war-like utterances seems to have survived first contact with the enemy. In marked contrast, Davis now appears to accept the importance for the UK of favourable access to the single market and the probable need to pay for it. But this Damascene conversion may not be simply a personal history of reflection and repentance. It has a wider political significance.

Two clear categories of pro-Brexit voters could be discerned: those who voted for primarily economic reasons and those for whom issues of sovereignty and national identity were paramount. For the latter, the Davis volte-face may appear premature and disappointing, but scarcely undermines the reasons why they voted for Brexit. That British ministers should be negotiating with the EU as a foreign power like any other will be for most of them a sufficient reward for their vote. But that does not hold true for those who voted for Brexit in the expectation that it would at worst be cost-free and, more probably, economically advantageous. Davis's willingness to envisage costs arising from Brexit, costs that would not have been payable had the UK remained an EU member, is a first disavowal of the elaborate structure of wishful thinking and outright deception that characterized much of the referendum campaign. There were those who voted for Brexit “at any cost”. But there were at least as many who voted for Brexit “at no cost.” The latter's no doubt growing realization that they have voted for an illusion will be an important factor in the evolution of the UK's European debate over the coming months. That unexpected by-election victory of the Liberal Democrats (in Richmond Park) could pave the way for current and potentially growing hostility to Brexit's implications to find effective political and electoral expression.

ORGANIZED POLITICAL OPPOSITION

Richmond Park was in many ways an unusually favourable environment for an experiment in pro-Remain politics. Until the 2015 General Election, the Liberal Democrats had been strong electoral contenders in the constituency; it had voted overwhelmingly in the referendum for Remain; and the independent (ex-)Conservative candidate, Zac Goldsmith, had earlier in the year fought a distasteful campaign (he lost) for the post of London mayor which offended many liberal-minded voters there. Even so, it would be a rash enthusiast for Brexit who failed to understand the potential danger posed to the Conservative government and its plans for leaving the EU by what happened in this by-election.

Unusually for by-elections, several national parties did not put up candidates. UKIP were content to have their views represented by the prominent Brexit supporter, Goldsmith. Although he stood as an independent, no official Conservative candidate stood against him. Perhaps most significantly, the Green Party, which had received six percent of the votes in 2015, did not put forward a candidate, in an explicit desire not to split the pro-Remain vote. The contest was thus unambiguously between political forces favouring Brexit and their opponents. The Labour Party, which had turned down suggestions that it should support a single “pro-Remain” candidate, was punished by the voters, winning less than four percent. Richmond Park strongly suggests that in the right circumstances “Remain” voters are prepared to coalesce in support of a single candidate who shares their hostility to the government's pro-Brexit policies. In Richmond that candidate was the Liberal Democrat; there may well be other occasions on which he/she might be from Labour, the Green Party or even (in theory) from the Conservative Party. It would be surprising if over the coming two or three years no further occasions presented themselves for “Remainers” to demonstrate their electoral cohesion.

BREXIT IN THE HOUSE OF COMMONS

The forthcoming debates in the House of Commons on triggering Article 50 may well act as a favourable background against which those wishing the UK to remain in the EU can sharpen their political lobbying. The High Court decision to forbid the government to proceed on Article 50 without Parliamentary sanction (and its anticipated reaffirmation by the Supreme Court) will not of itself prevent May and her colleagues from invoking it. The courts' judgements will be procedural, not substantive in nature. But the intense political debate in the Commons over the coming months ensured by these two judgements could well cause considerable problems for the government and its programme for Brexit, if not immediately, then in the medium and long term.

In Richmond Park, the main opposition party in Westminster, Labour, was handicapped by its inability to articulate publicly a clear message on Europe. Some of its leaders, such as Jeremy Corbyn and John McDonnell, seem to be indifferent, or even welcoming towards the prospect of a rapid British exit from the EU. At other end of the spectrum, some Labour MPs have said they will vote against the invocation of Article 50 in all circumstances. Yet others, perhaps a majority of the Parliamentary Labour Party, say they accept the result of the referendum but proclaim their dissatisfaction with the way in which the government is going about the Brexit process. The Parliamentary debates of the coming months are unlikely entirely to resolve these divisions within Labour. There is, however, some reason to believe that the Party is now laying down conditions and markers against which it will judge the outcome of the pending European negotiations. Some leading Labour pro-Europeans clearly think that there will be more political scope in 2018 or 2019 for them to refuse to endorse that outcome than there is now to oppose their initiation. Given the likely course of these negotiations and the political background against which they will be unfolding, this is not a far-fetched expectation on the part of the Labour pro-Remain wing.

The former Conservative Prime Minister, Sir John Major, has recently argued that a second referendum on the "terms of Brexit" might be necessary and politically appropriate after the government has concluded its negotiations. Unsurprisingly, this suggestion was rejected out of hand by many members of his Party as an illegitimate attempt to reverse the outcome of a referendum lost by Sir John and his sympathizers. More subtly, others argued that the text of Article 50 in effect precludes any such second referendum. The terms of the agreement reached under the initial Article 50 negotiations over two years will bear primarily upon such technical matters as: pension payments to former British officials in EU institutions; British membership of European agencies; and payments from and to the UK under multi-annual European programmes. These detailed issues are implausible candidates for submission to the British electorate in a second referendum. Moreover, any rejection by the British electorate (or even by MPs) of the Brexit terms negotiated by the May government could not prevent the UK from leaving. Such a rejection would, under Article 50, simply ensure that the UK left with the greatest possible degree of confusion and uncertainty, with no agreement on exit terms. There is some truth in these concerns about a disorderly Brexit, but their significance should not be over-stated.

THE WORKINGS OF ARTICLE 50

A draughtsman of Article 50, the British diplomat Lord Kerr, has admitted that he never expected its provisions to be activated. This may explain why it sets out so clear a timetable of two years at most for the negotiations on leaving between the seceding state and the rest of the EU; but is silent about any timetable for talks on future relations between the two sides after secession. The Article's draughtsmen seem to have been generally aware

of this potential difficulty and stipulated that the secession agreement should be drawn up “taking account of the framework for its (the seceding country’s) future relationship with the Union.” The British government’s clear hope is that by the time the Article 50 agreement is signed, a final accord, or something very close to it, will be in place between the UK and its partners about their future relations. In his recent article and interviews on the subject, the EU negotiator for Brexit, Michel Barnier, has expressed his doubts about the practicability of achieving agreement on this complicated issue in in such a brief period of time. Increasingly, officials in London and Brussels are speaking of the probable need for a “transitional” agreement to bridge the gap between signing any Brexit agreement under Article 50 and concluding a future deal on long-term relations.

All the above considerations undoubtedly complicate the objective background to any second referendum on Brexit in late 2018 or early 2019. But the provisions and workings of Article 50 need not prove an insurmountable barrier to staging a second referendum if there is substantial political momentum behind the initiative. By early 2019, the British government and electorate will have a much clearer idea than now of the likely economic and trading relationship with the EU after Brexit. In particular, they will be much better placed to form a global judgement on the crucial questions of British access in the longer term to the single European market and the Customs Union, even if details of this new relationship can only be agreed after further painful negotiation. By 2019, the proposition that the EU will reverse all its public statements hitherto and offer favourable terms to a ‘Brexiting’ UK will have been tested for nearly two years, probably to destruction. A second referendum would give the British public the opportunity not merely to make a judgement on the technical issues of the Brexit terms but to accept or reject the real alternative to continuing British membership of the Union, as brought out during those Article 50 negotiations. There is every reason to believe that this much more transparent choice will be less attractive and appealing than that presented by the “Leave” campaign.

Nor should it be taken for granted that a second referendum which rejected the Article 50 terms would have no impact on Britain’s leaving the EU. The government which had accepted these rejected terms could scarcely be expected to survive. Its successor would have a wide range of options open to it: holding a General Election, withdrawing the invocation of Article 50, or asking for an extension of the two-year negotiating period. If the UK’s partners saw such an extension as being the probable prelude to the country’s remaining a member, it is highly probable that they would be willing to grant it. The expectation that the UK will inevitably leave before the next General Election due in 2020 is predicated on the assumption that a Conservative government, probably led by May, remains in power over that period. A second referendum vote against that government’s negotiated terms for Brexit would destroy any such assumption.

THE COURSE OF FUTURE EVENTS

In truth, two radically different possible paths present themselves for the evolution of the UK’s European political debate over the next two years. One sees the current government holding fast to its course of taking the UK out of the EU by mid-2019, with minimal economic disruption either before or after the moment of Brexit, and with the May government helped by the willingness of its European partners to accommodate British demands about their future relationship. In such circumstances, the chances of rejection of the Brexit terms, whether by Parliament or a second referendum, are not high. An equally if not more plausible perspective, however, paints a very different picture: of increasing economic difficulty as national and international economic actors understand Brexit’s real implications; as the UK’s partners remain unyielding in their refusal to compromise with what they see as unreasonable British

demands; and as public and political opinion evolves towards asking whether the actual Brexit on offer is as alluring a prospect as the mirage offered by the “Leave” campaign.

The British government probably hoped that it could use the postponement of the invocation of Article 50 to lobby those European governments it thought most sympathetic for help in achieving a favourable outcome of the negotiations. If it had such hopes, they have been disappointed. All the EU governments, together with the Commission and the European Parliament, have refused to negotiate with the British before Article 50 has been triggered. They have unanimously repeated, with greater or lesser emphasis, their insistence that Britain’s trading terms with the EU cannot be as favourable after Brexit as they were when the UK was a member. The protestations of Brexit supporters that such declarations are simply rhetorical posturings have largely sufficed until now to reassure British public opinion that Brexit can be “made to work”. May’s most recent formulation of her negotiating goal as a “red, white and blue Brexit” is equally designed to inspire confidence in her listeners that leaving can be managed in a way economically advantageous to the UK. 2017 will be a year in which these reassurances are put to the test.

Throughout the UK’s entire EU membership, successive British governments have underestimated the determination of their partners to pursue the path of European integration and their solidarity in pursuing this objective. David Cameron’s failure to prevent the adoption of the Fiscal Compact in 2011 and his disavowal by the otherwise supportive Merkel in 2015 when he attempted to question the principle of free movement are conspicuous recent examples of this phenomenon. It is more than likely that a similar process has been occurring in 2016. It is inconvenient for the British government to accept that its European partners mean what they say when they warn against any UK “cherry-picking”. In consequence, British officials and politicians spend much time telling themselves and each other that these utterances are simply negotiating tactics and that eventually their now recalcitrant partners will see the wisdom of proposals emanating from London. If and when it becomes clear in the course of 2017 and 2018 that such is not the case, this is bound to have a significant impact on British public and political opinion-formers. It will have been shown that May is “playing her cards close to her chest” not because she is a skilled player of diplomatic poker but because she knows just how weak her cards are. If they wish to make her path towards Brexit more difficult, her European partners will have every interest in playing on this weakness.

Even as the Supreme Court were deliberating, MPs accepted by an overwhelming majority the May timetable for invoking Article 50 by the end of March, 2016. Those significant political forces in the Commons and elsewhere opposed to Brexit have clearly concluded that now is not the time to be seen to reject the outcome of the June referendum. Their willingness to take a stand against Brexit in 2018 or early 2019 will largely depend upon events between now and then. Increasing evidence that the prospect of Brexit is harming the British economy, refusal of Britain’s European partners to concede favourable arrangements to the UK, general unpopularity of the Conservative government, by-election successes for “Remain” candidates—all these would be factors encouraging organized resistance by those hoping to remain in the EU after 2019. But, if these factors are not present, or only marginally so over the next two years, the Conservative government is likely to realize its Brexit timetable. That only one Conservative MP, Kenneth Clarke, was prepared to vote against triggering Article 50 demonstrates how firmly Eurosceptic ideas are mainstream in today’s governing Conservative Party.

This hardly splendid isolation is at least in part a consequence of the unwillingness of such pro-European Conservatives as the former Chancellor to pursue over recent years their political agenda for their Party with the same ruthless commitment as their Eurosceptic opponents.

UK pro-Europeans have an unimpressive record as tacticians and strategists. Events over the next two years may, however, provide them with a final opportunity to eradicate the consequences of repeated past mistakes.

That so many of the leading figures in “Remain” are unwilling so far to commit themselves publicly to a campaign to reverse the referendum’s outcome is understandable, if unheroic. They should perhaps, however, reflect that in politics as in much of life it is often too early to take action until suddenly it is too late. There are indeed economic and political factors that over the next two years could well make outright Parliamentary opposition to Brexit easier than now. The great majority of forecasters predict difficult times for the British economy in the coming years, while May’s negotiations with her EU partners are unlikely to be other than fractious. But these factors will need to be exploited by organized political campaigning, flying in the face of important opinion-formers in the mass media. If the great majority of the Labour Party can be persuaded to campaign against Brexit and a small minority of the Conservative Party to join them, it can perhaps, even probably, be avoided. If that does not happen, Brexit will go ahead in 2019. It would be a brave prophet to predict which of these alternatives will be the final reality. To prevent Brexit, Labour will need to emancipate itself from the fear of losing to UKIP an important tranche of its traditional voters, while the pro-EU Conservative minority will need to show courage and determination they have not shown in the past. Both these eventualities are entirely possible. Neither can be guaranteed. ●

About Brendan Donnelly

Brendan Donnelly is Director of the Federal Trust for Education and Research.

About Social Europe

Social Europe (SE) is a leading digital media publisher. We use the values of 'Social Europe' as a viewpoint to examine issues in politics, economy and employment & labour and are committed to publishing cutting-edge thinking and new ideas from the most thought-provoking people. Since its founding, SE has published thinkers and decision-makers of the highest calibre including Nobel laureates, global leaders and internationally acclaimed academics as well as some of the best young talent.

About the Friedrich-Ebert-Stiftung

The Friedrich-Ebert-Stiftung is a non-profit German political foundation committed to the advancement of public policy issues in the spirit of the basic values of social democracy through research, education, and international cooperation. The FES, headquartered in Berlin and Bonn, has 13 regional offices throughout Germany and maintains an international network of offices in more than 120 countries.

Friedrich-Ebert-Stiftung
44 Charlotte Street
London W1T 2NR
T: +44 (0)207 612 1900
E: info@feslondon.net
www.feslondon.org.uk

Colophon

© Social Europe 2016. Published in London in cooperation with the Friedrich-Ebert-Stiftung London Office. Design and typesetting by David McAllister.