



Reflections on the Brexit anniversary

Summary

Three days after the referendum Boris Johnson (BJ), leader of Vote Leave, wrote in the Daily Telegraph:

- British people will still be able to go and work in the EU, to live, to travel, to study, to buy homes and settle down. There will continue to be free trade and access to the single market.

On 13 July 2016, the new Prime Minister (Theresa May) appointed BJ as Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs. He resigned in July 2018 in protest at her approach to Brexit, which would have meant the whole of the UK remaining on a temporary basis in the Single Market and Customs Union to avoid a border between the Republic of Ireland and Northern Ireland – the backstop.

BJ succeeded Theresa May as leader of the Conservative and Unionist Party and Prime Minister in July 2019, and binned (his word) the UK wide backstop. But the Northern Ireland Protocol – part of the Withdrawal Agreement (WA) - now provides for border controls on goods, especially foodstuffs, moving from Great Britain to Northern Ireland, controls to which Ulster Unionists are viscerally opposed. In December 2019, with 44% of the vote, BJ won a decisive victory in a general election, the third in four years.

BJ's article can be excused as a prediction. What Brexit would actually mean in practice had not been decided, in June 2016. But his election victory was based on a lie about the contents of the Withdrawal Agreement (WA) with regard to trade between Great Britain and Northern Ireland. BJ's preferred solution is to "sandpaper" – a euphemism for removing the border that he agreed to - the Northern Ireland Protocol. Many Ulster Unionists feel betrayed, and want to scrap it. Lord Frost now says that the British government does not regard it as "definitive." The UK, which traditionally set great store by its reputation as an upholder of the rules based international order, is now gaining a reputation for breaking international law.

The EU set out "Essential Principles" on Citizens' Rights (CR) on 24 May 2017. These provided for the status quo ante Brexit supervised by the Court of Justice of the EU (CJEU).

Theresa May ignored these principles because they would have preserved Freedom of Movement (FOM) and the jurisdiction of the CJEU. She sought to use the presence of 3.5 million EU citizens in the UK as a bargaining chip to preserve the rights of UK citizens in the EU. For UK citizens in the EU, the CR provisions of the WA fall well short of the predictions in Johnson's Daily Telegraph article. Despite her protestations to the contrary, CR were not Theresa May's first priority. The former Home Secretary was intent on abolishing freedom of movement (FOM), and taking back control of the UK's borders. Johnson's first priority was to become Prime Minister

With help from the ABS and Britain in Europe, the informal association, UK Citizens in Austria (UKCA) was able to hold its first meeting in Café Ministerium on 13 September 2017. UKCA had, and has, two objectives:

- To campaign for British citizens in Austria to retain the rights that they enjoyed as EU citizens until 31 December 2020;
- To explain Brexit related political, economic, and social developments in the UK and the EU

In a recent article in the Financial Times, Martin Wolf, (one of Michael Gove's despised experts), described Johnson's Brexit win as a Pyrrhic victory. Brexit was making the UK less influential, less prosperous, and was diminishing opportunities for British people. In the longer run, Brexit was likely to damage the UK, perhaps split it up, while strengthening EU solidarity.

The Referendum

On 9 June 2016 the ABS organized a pre referendum debate in the Diplomatic Academy. Melanie Sully and I put the case for remain – not terribly well, because at the end there was a slight increase in support for leave. I drew attention to:

- Exaggerated predictions of Brexit economic doom by Remainers, such as George Osborne, Chancellor of the Exchequer.
- Lies by vote leave, including the insistence by Penny Mordaunt, (then a Defence Minister, now Paymaster General, supporting Lord Frost on trade and “domestic transition”) live on TV, that Turkey would join the EU. She backed up Farage's scurrilous anti-immigrant campaign, a major factor in the outcome;
- The disadvantages of Brexit, including:
 - the risk to the fragile peace process in Northern Ireland (NI). The Secretary of State for NI was a disgrace. (One of Theresa Villers' successors (Karen Bradley) did not know that people voted on sectarian lines in NI!)
- Possible breakup of the UK;
- possible exit from the European Convention on Human Rights;

- Loss of health care for British citizens in the EU,
- Damage to the economy.

I concluded that if Putin, Trump and Le Pen (Timothy Garton Ash had coined the acronym PUTRUMPEN) were in favour of something, it must be a bad idea.

Regarding my own prediction, I took refuge in the words of Professor (of history) Sir Tom Devine before the Scottish independence referendum in 2014 – the future is not my period. I expected a narrow victory for remain. I had underestimated the impact, in England and Wales, of:

- the migration issue;
- the daily diet of bilge about the EU pumped out over many years by the Express, Sun, Star, Mail, Telegraph (by Boris Johnson) and even, The Times. The BBC was obliged to give air time to the nonsense purveyed by vote leave snake oil salesman such as David Davis.
- The EU as a scapegoat for economic and social deprivation
- the weakness of the remain campaign. The Leader of the Labour Party, Corbyn had spent his life denouncing the EU as a capitalist racket.

The Exit Negotiations

These were replete with unpleasant surprises. The ineptitude of May, her Ministers and officials was unbelievable. Despite all the evidence to the contrary, they clung arrogantly to the illusion of the UK's sovereign equality with the EU as an independent state in charge of its own destiny. They displayed ignorance about the organization that the UK had joined in 1973. They ignored the advice of experts such as Sir Ivan Rogers (Permanent Representative to the EU in Brussels). They broke all the rules of negotiation, including:

- Work out your objectives before you start
- Retain leverage. (Don't invoke Article 50 till you know what you want);
- Don't box yourself in – by deciding to withdraw from the Customs Union and Single Market.
- Never make threats (such as no deal is better than a bad deal) that are not credible.
- Understand the other side;
- Maintain, credibility, respect, and trust.

The negotiations followed the EU's methodology, order of priorities, and commitment to transparency. Michel Barnier maintained the cohesion of the 27. The UK's divide and rule gambits failed.

The Outcome

The Withdrawal Agreement (WA) entered into force on 31 January 2020. It deals with three subjects:

- The bill (reste a liquider) for the UK's continuing obligations,
- Citizens' Rights (CR),
- Northern Ireland (a separate Protocol).

It provided for a transition period during which the UK remained bound by EU rules and benefitted as if it was still a member state. The UK declined to prolong the transition period beyond 31 December 2020. Negotiations on a Trade and Cooperation Agreement (TCA) were concluded just before Christmas 2020. It provides for quota and tariff free trade, but not much else. But it is better than No Deal which would have precipitated chaos. It has been ratified by the UK and EU Parliaments.

Northern Ireland

Brexit and the (GFA) Good Friday/Belfast Agreement (1998) are not compatible with each other. The GFA abolished the frontier between Northern Ireland and the Republic of Ireland. Because the UK insisted on leaving both Customs Union (CU) and the Single Market (SM), to "take back control" and do its own trade deals, a border had to be placed somewhere. Theresa May's provisional backstop would have kept the UK in the CU and SM pending other solutions. Boris Johnson agreed to a border in the Irish sea – i.e., controls on trade, including health checks on foodstuffs, between GB and NI, but pretended that he had not. On this fraudulent basis, he led the Conservative Party to victory in the December 2019 general election.

Prospects for the Union

Support for independence in Scotland has increased from 45% in the 2014 referendum to around 50% now. The SNP is the dominant party and is committed to holding a second referendum on independence. The Labour Party remains strong in Wales (where opposition to Brexit and interest in independence has grown), London, and other cities. The First Minister of Wales, and others, including former UK Prime Minister Gordon Brown, are calling for a fundamental reorganisation of the British state on federal lines, to prevent its breakup. But there is no sign of Johnson agreeing. His focus is on short term eye catching "levelling up" projects. The UK internal market legislation erodes devolution. In Northern Ireland, Unionists feel betrayed. Pro unification Sinn Fein may become largest party at elections to the Assembly next year. The prospects for peace and stability are uncertain.

The Economy, Politics, and International Relations

The economy is going downhill, as predicted by most analysts, but without much impact on support for the Conservative Party so far. Remainers may permit themselves a wry smile. Tim Martin, prominent pro Brexit founder of the pub chain J D Wetherspoon, is calling for immigration controls to be relaxed so that he can staff his pubs with EU workers on the minimum wage. His defenders argue that the UK, not Brussels should make a sovereign decision. They are missing the point. The UK has lost control and influence, across the board. Trump was pro Brexit. Biden, proud of his Irish roots, is not. The strategic and trade tilt to the Indo Pacific Anglo sphere does not correspond to the UK's actual priorities in either trade, with its biggest market by far, or dealing with the greatest threat to its security – from Russia.

COVID is keeping Brexit out of the headlines and masking (sic) its impact on the economy, for now. The leader of the opposition, Sir Keir Starmer, is keeping quiet with regard to Brexit, running scared of Labour leavers in deprived areas who now vote Conservative. It is left to the SNP to proclaim Scotland's future as an independent country that welcomes immigrants and would be welcomed back into the EU. There are however signs of a Liberal Democrat revival in prosperous Conservative territory in the south of England.

Citizens' Rights (CR)

There was agreement by the UK and the EU, that citizens who had made life choices on where to live and work before Brexit should not suffer a loss of rights as a result of the vote. The EU's initial offer of the status quo ante Brexit in May 2019 complied fully with this agreement. The UK ignored the EU offer because accepting it would have involved oversight by the Court of Justice of the EU. The EU reduced its offer. According to the WA British citizens retain their rights only in their country of residence. There are two routes to retention of rights:

- By application, the constitutive system.
- By declaration.

Both the UK (settled status) and Austria opted for the constitutive system.

According to a recent article in the Independent "more than 6 million EU citizens applied for settled (or pre settled) status" before the scheme closed on 30 June. Even if many applicants have left the UK for the time being, the number far exceeds the pre referendum estimate of 3.5 million EU residents. The Home Office reports approving over 5 million applications. The Austrian Embassy reports that over 23,000 Austrians citizens have received confirmation of their settled status. The largest number of applications – 1 million – has been received from Poles. EU immigrants outnumber those (3.5 million) from the Indian sub-continent and the Caribbean combined. Hardly any applications have been refused. The success of the scheme has exceeded all expectations.

But still, if even one percent of applications run into difficulty, that would be 50,000 awkward cases, including for example children in care who may only discover their lack of settled status, much later. The Home Office will be anxious not to find itself embroiled in a rerun of the Windrush scandal.

The immigration issue making headlines in the UK at present is people smuggling across the Channel. The French should try harder to stop the boats. New legislation to break the smugglers' business model may conflict with the UK's obligations under the 1951 Refugee Convention to consider asylum applications on their merits, not the route by which the applicant arrived in UK. Meanwhile, Poles, Romanians and EU citizens generally are welcome, in the hard-pressed NHS, as fruit pickers, HGV drivers etc.

The obtuseness of British Brexit negotiators was evident in health care negotiations for British pensioners resident in the EU in the event of a no deal Brexit. They would not accept that a country such as Austria requires a legal base (EU Social Security Coordination legislation) for receiving reimbursement from the NHS for care provided to UK pensioners. Pensioners who had paid "National Insurance" throughout their working lives were threatened with loss of coverage at one month's notice, in the event of "no deal." Lord Frost now derides the EU's approach to the Northern Ireland Protocol as legalistic purism. He seems to have forgotten that *pacta sunt servanda*.

The Austrian authorities are providing exemplary assistance to British citizens, in cooperation with UKCA; British in Austria and the embassy. The deadline for applying for an EUV 50 card has been extended until 31 December. But many British citizens entitled to an EUV 50 card are proving hard to reach.

Comment

Brexit has exposed weaknesses and ambiguities in the UK's constitutional, and democratic framework. Parliamentary sovereignty allows Parliament to change/abolish any law. One parliament cannot bind its successors. The courts cannot overrule legislation as unconstitutional. Under the first past the post system for elections to the House of Commons no governing party has won an absolute majority of votes cast since before the second world war. The Conservative victory in 2019 is a case in point: 44% of votes cast produced a majority of 80. Scotland, Northern Ireland, and now Wales, oppose the English Brexit. Thus, if and when COVID recedes, the big question in UK politics will be the future of the union. The immediate issue may be instability, even violence in Northern Ireland.

Written by

Colin A. Munro in cooperation with **Alexander Christiani**, both Board Members of the Austro-British Society and former Ambassadors, leading the ABS Expert Group.