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Theresa May's Brexit Dilemma

It Comes Down to Party vs. Country

Matthias Matthijs

MATTHIAS MATTHIJS is Assistant Professor of International Political Economy at Johns Hopkins University's School of Advanced International Studies.

If there were one award that British Prime Minister [Theresa May](#) <sup>[1]</sup> deserved this year, it would be a prize for political survival. After a botched general election in June, which saw her Conservative Party lose its slim majority in the House of Commons, most observers of British politics thought her days were numbered. The stunning rejuvenation of the Labour Party under [Jeremy Corbyn](#) <sup>[2]</sup>, a shaky “confidence-and-supply” deal with the ultraconservative Northern Irish Democratic Union Party (DUP) to prop up her government, endless cabinet infighting between so-called hard and soft Brexiteers, and constant plots to have her defenestrated did not bode well for the British leader at the time. By the end of the year, however, she could point to an Article 50 divorce agreement with the European Union that few thought possible. Although many of her MPs wanted her gone by the end of the summer, they are now clamoring for her to stay on until at least 2021.

Unfortunately for May, the Brexit rubber is about to meet reality road. In fact, the divorce agreement with the EU was nothing more than a diplomatic exercise in creative financial accounting, a hashing out of reciprocal citizens' rights, and a rather puzzling fudge on the [Northern Irish border](#) <sup>[3]</sup> question. All the tough Tory talk that the EU could “go whistle” after its money, and of ending European Court of Justice (ECJ) jurisdiction on day one of Brexit, quickly made way for the United

Kingdom to sign a deal largely on the EU's terms. Now May will have to show her party and her country that she can secure a future trade agreement with the EU that is both favorable in economic terms and will allow the United Kingdom to "take back control [4]" of its borders, its money, and its laws.

Sooner rather than later, May will have to make clear precisely what kind of Brexit her government wants [5]. Astonishingly, this conversation has yet to take place, since it would have exposed the fault lines at the heart of her cabinet. The lack of common purpose on the British side was already on full display during the arduous Article 50 negotiations. While Michel Barnier, the EU's chief Brexit negotiator, exuded French diplomatic eloquence and graceful clarity, David Davis, the British secretary for exiting the EU, gave the impression of being woefully unprepared, combining contradictory bumbling with clumsy ambiguity. The next few months will finally expose the lies at the heart of the Brexiteers' case for leaving the European Union for all to see. The United Kingdom will leave the EU in March 2019. But there will be no taking back control of anything in the short term, as the transition will see the EU status quo without a British voice. In the long term, either the Tory party splits and Labour comes back to power or the United Kingdom falls apart and is reduced to England and Wales.

## TRANSITION STANDSTILL

Now that phase one of the Brexit process—the divorce agreement as set out in Article 50 of the EU's Lisbon Treaty—has come to an end, the focus will shift to phase two, or discussions on the transition toward the final U.K.-EU settlement. Both the United Kingdom and the EU have agreed to allow for a transition period that will last up to two years and start on March 30, 2019, the United Kingdom's last day of EU membership, after which the country leaves the institutional structures of the union. Theresa May and her cabinet ministers prefer to talk of a "period of implementation [6]" that is strictly limited in time rather than a transition phase that could theoretically last forever. After all, thus far both the EU and the United Kingdom have left some ambiguity over whether the transition could be extended—not willing to tie their hands—even though agreeing in principle that it should be limited to two years. But the problem with the term "implementation period" is that

there is nothing to be implemented as long as the rough contours of the United Kingdom's future relationship with the EU have not been agreed upon.

Both parties have radically different ideas and expectations for what is possible during this transition phase. The EU, for its part, sees the transition as a standstill agreement, in which the United Kingdom continues to be a member of the EU's customs union and single market, respects the EU's common external tariff, pays into the EU budget as if it were a full member, accepts all new guidelines and regulations, and maintains strict regulatory convergence on all aspects of the single market. This also means that the United Kingdom will allow free movement of people, and will not be able to negotiate its own trade deals. At the same time, the country will no longer have a seat at the table and no say over new EU trade deals or regulations. In order to avoid Brexit copycats in other member states, the EU is adamant that the transition phase be tangibly worse for the United Kingdom than full-fledged membership.

The United Kingdom, however, sees the transition phase quite differently. Liam Fox, the British trade secretary, wants to hit the ground running and start preparatory work on new trade deals with Australia, India, New Zealand, and the United States, just to name a few countries. Michael Gove, the environment secretary, prefers the country to leave the common fisheries policy immediately after the start of the transition phase. Boris Johnson, the foreign secretary, insists that regulatory divergence from the EU can start on Brexit day, otherwise the country risks becoming a "vassal state" [7] governed by Brussels. Most Brexit hard-liners also crave to see an end to the free movement of people right after the United Kingdom formally leaves the EU. May will likely have to disappoint them on all of the above. The transition phase will see the United Kingdom retain all obligations of EU membership but lose its voting rights. So much for taking back control.

## NORWAY-MINUS or CANADA-PLUS?

Once the reality of the transition phase has sunk in, the debate in the United Kingdom over the next year will likely focus on two scenarios that are currently not even on the negotiating table in Brussels:

Norway-Minus and Canada-Plus. The idea behind Norway-Minus (or “soft” Brexit) is that Britain could have all the benefits of being in the single market—i.e. free movement of goods, services, and capital—but would be able to control immigration from the EU. Norway is also not a member of the customs union, so Oslo is able to set its own external commercial policy but has its goods imported tariff-free into the EU. (Although Norway has to accept the free movement of persons from and to the EU, the United Kingdom will want to control migratory flows, hence the “minus.”)

Although Norway-Minus will not be on offer—EU officials have repeated ad nauseam that there will be no “cherry picking”—the United Kingdom could negotiate a final Brexit deal similar to what Norway has today. The problem with such a scenario is that it violates the Leave camp’s promise of “taking back control of our borders, our money, and our laws,” as none of those would materialize. It is also hard to see a Norway scenario without a hard border in Ireland, which leaving the customs union would logically entail.

So what about Canada-Plus (or “hard” Brexit)? The only long-term relationship that satisfies most demands of the Brexiteers—immigration control, the United Kingdom freely trading with the rest of the world, and the end of ECJ jurisdiction—is to leave both customs union and single market and sign an EU trade deal similar to the one Canada signed last year. But the United Kingdom will want its deal to go a lot further than the Comprehensive Economic and Trade Agreement (CETA) between the Canada and the EU does in services liberalization—including passports for financial firms or as close as the benefits of full-blown single market membership (hence the “plus”).

It is easy enough to imagine a free trade deal in goods, but it is much harder to see a wide-ranging agreement in services materialize without free mobility of workers. In reality, British businesses stand to lose a huge deal from a Canada scenario, even if some key services can be included in the final deal. It is also hard to imagine such a deal being negotiated in less than two years. This would involve extending the transition period at least another two years, taking the country well beyond the next national election, scheduled for June 2022. Most Tory hard-liners would not accept such a delay.

Although the Norway scenario is by far the least disruptive from an economic point of view—and hence the preferred outcome for business—it exposes the Brexit campaign promises of “taking back control” as outright lies. The Canada scenario would at least give the United Kingdom the illusion of sovereignty, as it would allow London to control immigration, end the bulk of ECJ jurisdiction over British laws, and enable the country to sign its own trade deals and revive the old dream of restoring some version of the British Commonwealth. But the short-term economic cost would be substantial and the potential long-term gain uncertain. It is also a scenario that would take ten years to fully materialize. By then, the Labour Party could be back in power and choose to make the transition phase quasi permanent.

## CONFLICT OF LOYALTY

Signing the Article 50 agreement with the EU has not solved May's central Brexit dilemma. On the one hand, if it wants to respect the Good Friday Agreement that brought peace to Northern Ireland and stick with its promise to keep the Irish border open and free of customs controls, the May government has made a hard Brexit impossible, unless Northern Ireland votes to reunify with the Republic of Ireland, leaves the United Kingdom, and remains a member of the EU. It is hard to imagine Scotland not following suit in that case. Then we are back to the “former United Kingdom of England and Wales” (FUKEW) <sup>[8]</sup> scenario. On the other hand, by opting to stay in the customs union and the single market, May can probably keep her country united, but her Conservative Party will split, as the majority of her party will never accept being a “vassal state” of Brussels.

Keeping the country together will come at the substantial political cost of allowing free movement of labor and tolerating the full jurisdiction of the ECJ, without having any British judges on its benches in Luxembourg. From a trade point of view it is even worse. Not only will the United Kingdom not be able to sign its own trade deals but it will also have to swallow any future trade deal that the EU concludes with third countries without having a say on the matter. Turkey is a case in point. Ankara now has to allow Canadian goods tariff-free into the country, but there is no obligation on the part of Canada to reciprocate, since Turkey is not an EU member.

In sum, May will have to choose between her party and her country in 2018. The irony is that she is the leader of a party whose official name is the Conservative and Unionist Party. She could well preside over the breaking up of the United Kingdom in her perennial quest to appease the Conservative hard-liners. Hence, 2018 will be the year that shows the British electorate, and maybe even the majority of the House of Commons, that EU membership—especially the kind of membership that the United Kingdom enjoyed, i.e. with opt-outs from the single currency and the Schengen borderless travel zone—was vastly superior to any of the alternatives on the negotiating table.

The real tragedy is that the other shoe will probably not drop until it is too late, and Brexit will have become a reality. Article 50 is merciless on this count. Once the two-year clock starts, it is politically very hard to halt it. Nothing, of course, can stop the United Kingdom from reapplying for EU membership in the future, perhaps under a Labour government. But the country is likely to be met by a more skeptical continent this time around than during the 1960s, when French President Charles de Gaulle twice vetoed its application to the European Economic Community. The United Kingdom will never again have the sweetheart deal it enjoyed between 1973 and 2016.

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[4] <https://www.reuters.com/article/britain-eu-johnson/whole-uk-needs-to-take-back-control-of-borders-and-cash-from-eu-johnson-says-idUSL9N1M102B>

[5] <https://www.foreignaffairs.com/articles/united-kingdom/2016-07-18/which-brex-it-will-may-choose>

[6] <https://www.theguardian.com/politics/blog/live/2017/sep/22/theresa-may--florence-speech-brex-it-eu-future-barnier-pm-to-outline-uks-brex-it-future-in-vital-speech-in-florence-live-updates>

[7] <https://www.reuters.com/article/us-britain-eu-johnson/foreign-minister-warns-uk-cannot-become-vassal-state-of-eu-idUSKBN1EA0QT>

[8] <https://www.foreignaffairs.com/articles/united-kingdom/2017-03-29/pulling-trigger-brex-it>