

Brexit: United We Stand? Reflections on Theresa May's speech, March 2nd 2018

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Theresa May's speech today outlined five major conditions that she felt any Brexit deal had to fulfil. She argued first and foremost that any deal must "respect the referendum result". Nevertheless, it is not clear precisely what any given deal must do in order to pass this. In part this is due to the way in which the referendum question was framed: whilst a modest majority of voters voted against remaining in the EU, it is much less clear what, precisely, they were voting *for*. Whilst migration was of paramount importance for many leave voters, others would perhaps be content to remain within the European Economic Area and Customs Union for the purported economic benefits. For still others, fishing will have been the key issue and for many a, perhaps somewhat amorphous, desire for greater (British) sovereignty or repatriation of powers.

In some cases, a degree of confusion between the European Court of Human Rights and the Court of Justice of the EU may have played a part. The case of Abu Qatada, for example, has been raised by a number of people we have spoken to. In any event, for each of these groups, the key contours of Brexit will have meant something different and it is unclear how to translate these very individual conceptions into how to "respect the referendum result" in aggregate.

The second major test – that any agreement reached should stand the test of time – is perhaps better founded. Nevertheless, it is clear that the UK's involvement with the EU is likely to evolve over time as are the wishes of her people (demographic change alone is will see to that). As to the remainder of the conditions there is a strong argument to be made that they are somewhat vacuous. "Protecting jobs" is a fantastic political soundbite, but the overwhelming majority of available evidence suggests that labour market conditions (and particularly unemployment) are largely the result of domestic

policy. The economic arguments over Brexit are rather over the impact on living standards and quality of jobs.

Likewise, it's hard to see how a political agreement can lead to a Britain that is "modern, open, outward-looking and tolerant". In fact, it is not at all clear what such phraseology even means (what is a "modern" Britain? What brand of "tolerance" is a trade deal supposed to encourage? Are we to be tolerant of those views which we find uncomfortable or abhorrent?)

Finally, Theresa May's assertion that an agreement must "strengthen the precious union of our people" is deeply problematic. It is far from clear what the government (or, indeed, the devolved administrations) has done to address the problem of a vote in which Scotland voted overwhelmingly to remain part of the EU (as did London) but most of England voted equally passionately to leave. Indeed, we do not even yet fully understand *why* the constituent parts of the UK voted differently, let alone how to address those differences. The situation in Northern Ireland is even more serious with the vote appearing to divide primarily along religious lines (as with so much else).

Nevertheless, a number of parts of the speech were clearly designed to appease critics of the Government's policy, both at home and abroad. Her statement on the Irish border, namely that "[w]e chose to leave and we have a responsibility to help find a solution" is likely to find favour amongst those within the EU (including the Irish government) who have hitherto shown frustration with the administration.

The speech also pointed to an ongoing "blurring" of some of the UK Government's red-lines, particularly regarding the role of the Court of Justice of the EU. It is thus far unclear whether the Prime Minister will be able to convince her European colleagues to support her vision of third-party arbitration. It is unclear what Theresa May would be able to offer in order to induce them to do so, although an "EFTA" style court seems the most likely option if agreed.

The notion of "reciprocal binding commitments" to ensure fair competition may yet prove problematic for those wishing to "take back control". Ultimately, this comes against the same dilemma that the UK (and others) have always faced – there is a trade-off between

sovereignty and frictionless trade. The same is, of course, true of the Prime Minister's ambition to retain "substantially similar" regulatory standards on goods. In fact, this commitment to fair competition is one area where the UK Government appears closer to its European counterparts than the opposition Labour Party.

The details of her recent speech did lay out a number of areas where policy has evolved. In particular, the Government appears much keener on retaining membership (albeit some form of "associate" membership) of a variety of EU agencies. To a large extent this appears sensible and pragmatic – it is difficult to see how dropping out of the European Aviation Safety Agency or European Medicines Agency would be in the UK's national interests. Maintaining most elements of Open Skies is an obvious imperative.

The Government's acknowledgement of the importance of cross-border supply chains is very welcome. Equally, it is unclear how the Customs Partnership envisaged by the Prime Minister would ultimately be enforced. What is to stop third parties fraudulently using the UK in order to access the European market with reduced tariffs? Or, indeed, vice versa. It was interesting that the Government appears to have abandoned any hope of obtaining passporting rights for the financial services sector, instead relying on some form of equivalence and mutual recognition that has yet to be specified.

In sum, the UK's position has evolved substantially over the course of negotiations and the latest speech by the Prime Minister embodies this. Ultimately, considerable pragmatism will be needed and as the junior partner the UK will need to accept the vast majority of the EU's requirements. Nevertheless, the UK does appear to be moving towards a situation in which the trade-off between the complete sovereignty desired by many proponents of Brexit and frictionless trade is at least made explicit. What is less clear is how the continued sticking point of Northern Ireland can be addressed outside of a full Customs Union and thus ongoing primacy of EU standards, including the role of the ECJ as arbiter of these.

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