

# The Winner Takes It All, Maybe!

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The title of this blog is, once again, inspired by a pop tune; this time the 1970s single 'The Winner Takes it All' by supergroup Abba. This single includes that lyrics that, "I've played all my cards, And that's what you've done too, Nothing more to say, No more ace to play, The winner takes it all..." This song was a song about losing out in love and the divorce that follows. Whether there is ever a winner in divorce is debatable. And in the fractious divorce process that is Brexit it becomes patently clear that there will certainly be no winners.

Parliamentary debate this week concerning Brexit has been an emotional 'rollercoaster'. For those unaccustomed to what may seem like esoteric procedures, there may be amusement as well as, perhaps, bemusement. There has been a series of votes on motions concerned with, largely, agreeing the withdrawal agreement negotiated between the government and the other 27 members of the EU on Tuesday, rejecting a 'no deal' exit on 29<sup>th</sup> March and, finally, *inter alia*, seeking to extend the period of Article 50 beyond the scheduled two years.

Theresa May could be forgiven for feeling that this week has been characterised by more emotional highs and lows than is normal. On Monday there was what turned out to be premature jubilation following her rushed visit to Strasbourg to meet Jean-Claude Juncker, President of the European Commission. She believed she had gained additional "legally binding" alterations to her withdrawal deal that would allow the UK to unilaterally depart from the 'backstop'.

This was based on a belief that if the EU was considered not to be acting in good faith it would be possible to invoke a complaint to an independent arbitrator. Theresa May and others in government expressed the view that this would be sufficient to get the Democratic Unionist Party (DUP) to sign up to support her deal and, in all likelihood, those within her own party who contend that the backstop is a way to trap the UK in the EU is, effectively, perpetuity.

The sense of deflation felt by Theresa May on Tuesday upon learning that Attorney General, Geoffrey 'Codpiece' Cox believed, in his professional judgment, that the changes made to the withdrawal agreement would make no difference as far as the backstop were concerned, can only be imagined. As commentators speculated, this would probably result in a second defeat of the meaningful vote number two of her withdrawal deal on Tuesday. This is precisely what happened.

Though the defeat was not as great as the previous one, 149 as opposed to 230, it created the circumstances that led to votes on Wednesday to rule out 'no-deal' and on Thursday to extend the Article 50 process to 30<sup>th</sup> June though this has to be agreed by 27 leaders of the other EU countries. These votes are blows to the credibility and authority Theresa May 'enjoys' in Parliament, in the country and in Europe. Whilst there were some victories in the motions put before the House of Commons, they are probably too insignificant and too late to be of much comfort.

Events in Parliament this week have proved that this country's relationship with Europe and the ability of a Conservative Prime Minister to keep control of their own party are a dangerous combination. Theresa May will not be the first, nor, depending on events, the last leader of her party to be a victim of the so called 'eurosceptics'. Conservatives implacably opposed to Europe were famously described by former leader John Major during his travails resulting from trying to gain agreement to the Maastricht Treaty (officially the Treaty on European Union) as "bastards". According to well-placed sources, an advisor to May's predecessor, David Cameron, described eurosceptics as "swivel-eyed loons."

Undoubtedly Brexit has created heightened interest in the way that Parliament operates and this week's indicative votes in which motions are proposed and amended, so as to allow MPs to express their views has clearly shown that whilst there is agreement about what is not wanted, there is little unanimity about what will work. As has also been demonstrated throughout the process of leaving the EU, Brexit cuts across party lines and even when parties instruct their MPs to vote in a particular way – known as being whipped – they do not always do so.

Hence, Theresa May narrowly won a vote that would have taken the process way from the government (the 'Executive') because Labour members defied the whip. Equally, Conservative members voted against a motion supported by government to extend Article 50. That one of these MPs was the Brexit Secretary Stephen Barclay who, only a couple of minutes before, had spoken from the despatch box to exhort support for the motion makes Parliament look increasingly preposterous in the eyes of casual observers.

Normally defying your party whip results in some sort of consequences. Members of the Cabinet, are expected to resign for doing so and would, previously, be sacked for going against the wishes of the government. However, these are not normal times and, as many commentators believe, Theresa May is an enfeebled leader whose only purpose is to act as a 'lightening rod' for the opprobrium that Brexit is creating domestically and, more pointedly, within the EU. Her departure as PM is surely not far away, though the possible extension of Article 50, subject to EU agreement, may lengthen her occupancy of No 10.

Political analysts recognise that what we have seen creates dangerous precedents for the future. It has been demonstrated during the chaos of parliamentary voting this week – one senior Labour figure used the word 'omnishambles' – a government cannot control cabinet members let alone mere MPs, how can any future administration operate effectively? Brexit, if and when it ever ends, appears to have severely undermined the integrity of systems of governing that were the envy of the world. That stated, this could be the opportunity for constitutional reform though, it has to be accepted, radical reform is always difficult.

As always in events of national significance, there are lighter moments such as the decidedly unparliamentary language used by members of one party to issue insults against, usually, members on the same side. It was particularly telling to read a tweet by respected TV commentator Robert Peston in which he described asking an unnamed Tory (one of 15), who voted for the Benn/Letwin/Cooper amendment, why more of his colleagues who hate 'no-deal' didn't join the rebels was told, "They are morons – genuinely not bright." This strongly indicates the enmity that Brexit has created internally within the two major parties. Another amusing comment came from a senior

EU negotiator who stated that the vote by MPs that there should not be a 'no-deal' Brexit was like "Titanic voting for the iceberg to get out of the way."

Meanwhile, outside the rarefied atmosphere of Parliament there is incredulity that the uncertainty created by Brexit continues. Edwin Morgan, who is the interim director of the Institute of Directors believes that businesses, though thankful that the immediate danger of leaving on 29<sup>th</sup> March with 'no-deal' appears to have receded, will not welcome continued uncertainty and argument in Parliament. The fact that we are still only discussing the withdrawal which, notably, precedes the next stage when the really tough negotiation concerning trade deals, is not to be lost on business.

The key question being asked is what will happen next? There are no guarantees and, should the EU decide it has had enough and refuse any extension to Article 50, the default (and legally agreed) position is that the UK leaves on 29<sup>th</sup> March at 11.00pm GMT with 'no-deal'. This, it is agreed by everyone apart from the diehard Brexiteers, is a doomsday scenario and economic chaos would ensue.

Interestingly, George Parker from *The Financial Times* tweeted that Theresa May is "losing her way to victory" in that he thinks she may eventually gain agreement for her withdrawal deal. There are indeed signs that DUP MPs as well as other members of Parliament opposed to her deal want to justify a *volte face* in now supporting it. Reports that Attorney General Geoffrey Cox is considering using Vienna Convention Article 62 of the Vienna Convention on the Law of Treaties (VCLT) on the basis of "fundamental change of circumstances" to achieve such support by legally justifying withdrawal from the backstop have met with severe scepticism by a range of legal experts.

Cox's view that Article 62 might apply has, very significantly, also been dismissed by a "star chamber" of Brexiteer lawyers including DUP deputy leader Nigel Dodds and long-time critic of Europe Sir Bill Cash. These lawyers believe that his advice was "badly misconceived" and stress that the Vienna Convention should only be used "in extreme circumstances." That even the fall of the Soviet Union in 1989 did not provide sufficient reason to trigger suggests that Cox is 'clutching at straws'.

Moreover, Cox, we are informed, was willing to assert that if was shown that the backstop was having a “socially destabilising effect on Northern Ireland”, Article 62 of the Vienna convention could be triggered. Given the continuing fragility of the peace process in Northern Ireland that has, it is universally agreed, been undermined by Brexit, Cox’s suggestion feels suggests a combination of desperation and insensitivity.

Brexit, it increasingly seems, is creating mayhem and potential chaos. The argument that this was the will of the people as a result of a non-binding vote that occurred some 33 months ago becomes less persuasive as every day passes. Whatever happens Brexit has created a legacy with unanticipated and unfortunate side effects. It is even being mooted that if the UK were to decide that Brexit has been a mistake and Article 50 should be revoked, some EU members might not be willing to have us back; we’ve become more trouble than we are worth. This does not bode well for future relationships between the UK and EU if withdrawal by the former does ever occur.

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