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Austen Morgan: Brexit should not have been this complicated ... it was only in EU's interest to muddy the waters over Irish border

Britain could've triggered article 50 and cut a deal over trade but Barnier and co were determined to make them pay, writes Austen Morgan

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Leo Varadkar and Simon Coveney helped the EU achieve their goals

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Oh dear, oh dear, oh dear! This is no way to do public policy, especially when international relations are involved. On Wednesday evening, the UK government published its 585-page draft agreement with the EU. Brexit by consent beckoned, only to see British governance crumble - with regicide lurking.

The tragedy of this new spectator sport is that it did not need to happen like this.

In June 2016, the people of the UK voted by 52% to 48% to leave the EU. I voted remain. However, as a constitutionalist, I accept Brexit, along with Vernon Bogdanor and others.

Leaving the EU is, or should be, simple under article 50: 28 member states become 27; and it involves automatically falling out of the broader European economic area ('EEA'), additionally embracing Iceland, Liechtenstein and Norway (with Switzerland hovering).

After that comes a bespoke free trade agreement: Canada plus plus plus because there is no need to align; or simply world trade organisation rules.

The origin of the present crisis lies in our modest 1998 Belfast agreement of some 44 pages (though my legal textbook runs to 601 pages!). The only implication of Brexit - I jest not - is the demise of the tiny north-south EU special programmes body, involved in spreading Brussels largesse on both sides of the border.

But that was to reckon without some political lawyering in Northern Ireland. On January 24, 2017, in the Gina Miller case in the UK supreme court, two Northern Ireland appeals failed. The Belfast Agreement - in the eyes of all 11 justices - had absolutely no implications for Brexit.

That was to reckon legally without regard to a number of political suspects. The first is Leo Varadkar/Simon Coveney. Irish governments, with their over-blown concept of the Good Friday Agreement, raised recklessly the spectre of a so-called hard border (like the Berlin wall before 1989?).

The Irish border is a stable international frontier between two states in Europe. One may think of a security border, a people's border and a trade border.

The first passed with the end of the Troubles, and it is alarmist to talk up a return. The second never existed, because of the administrative common travel area (which I cherish). And the third is an amalgam of: the same regulation; no tariffs or quotas; very little cross-border trade in goods and services; different currencies; different VAT rates; different taxation etc. etc. The EU did not ordain frictionless trade in 1973. That only came in 1993, with the single - or internal - market project in the Maastricht treaty.

There never was a problem of the Irish border and, insofar as issues presented, they were, and are, amenable to pragmatic solutions.

Early in 2017, I joined a multi-disciplinary project in London to work on the Irish border (our articles are available at [www.austenmorgan.com](#)). Little did we realize that the issue would dominate Brexit... and in the malign way it has.

We formulated a bilateral London/Dublin strategy of an agreed Irish border. The UK did not need to put anything on the border. The Irish, however, because of the common customs tariff, would have to do Brussels' bidding. We proposed helping them with technology, dealing with goods at source or destination. There would be no return to the border I remember, being stamped out of one state and stamped into the other.

Dublin, however, chose servility to Brussels (having exercised its article 50 right by deciding to stay).

The EU then theorized the idea of the backstop, in the December 2017 political agreement which moved the negotiations from the first to second phase.

The second political suspect is Monsieur Barnier, and his article 50 taskforce in the commission in Brussels. Unlike Dublin and romantic Ireland, this French statesman is positively tectonic about the European project: his head bulges with theory.

One can only criticise UK negotiating strategy since the article 50 notification in March 2017: allowing Monsieur Barnier to separate a withdrawal agreement from a free trade agreement; the foregrounding of EU citizenship, finance and Northern Ireland; the political agreeing of a backstop, in the hope that the EU would seek to avert it with free trade; the Chequers plan, with the naive idea of a common rule book; and now the draft agreement, supposedly overcoming an east/west border with the whole of the UK in a common customs territory.

Brexit means out of the EU: out of the single market; out of the customs union, out of freedom of movement; and out of the court of justice in Luxembourg; and back in to anything we choose, and are able, to agree.

The 585 pages of November 14 - as many are discovering without even reading - do not get us there.

The dogma of the Irish border problem is evident in the Irish protocol of 174 pages, including 10 annexes.

Dominic Raab, who should know, gave two reasons for resigning as Brexit secretary: "First, I believe that the regulatory regime proposed for Northern Ireland presents a very real threat to the integrity of the United Kingdom"; "second, I cannot support an indefinite backstop arrangement, where the EU holds a veto over our ability to exit."

Never has Northern Ireland, not even in the 1880s to 1920s, played such a major role in a national, UK, crisis.

And the consequence of that is Catholic/Protestant sectarianism, in the form of Leave/Remain polarisation, has been spreading to a hitherto moderate mainland unfamiliar - since the 17th century - with fundamentalism in politics.

Why did Monsieur Barnier, defending Euroland, become focussed on an insuperable Irish border problem? It is difficult to believe this was because of its complexity. It is more likely that it was because it was a wonderful stick to wield. The priority for the EU, after the 2016 referendum, was to make sure that the UK gained nothing, and no other member state embarked upon exiting. Thus the idea of Brussels punishing the UK.

I have debated with myself whether Brussels was engaged in rhetoric or reality: trying hard to get a workable withdrawal agreement with high negotiating decibels; or trying - as Donald Tusk, with the UK Government falling apart, hinted - to overturn the 2016 UK referendum result by stopping Brexit.

The EU of course has form in this area: Denmark in 1993-94; and the Republic of Ireland in 2001-2 and again in 2008-9.

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