**Did we ever really understand how the EU works?**

*The Brexit negotiations and what they say about Britain’s misunderstanding of the EU*

Negotiating with the EU is never easy. This is the painful discovery made by many over the last five or six decades, from US trade negotiators to would-be member states seeking to gain entry.[[1]](#footnote-1) The European bloc is large, somewhat ponderous in its internal decision making and highly prone to stick rigidly to its positions. This obstinacy and disinclination to move does not reflect ill-will towards its interlocutors or spring from the personality of its negotiators. Instead it is a structural inevitability: internal EU agreement is hard-won and precious; it is not therefore something that can easily be unpicked at the behest of an outsider – especially one that cannot, by definition, be represented in the vital internal EU meetings at which the negotiating stance is set. Both goodwill towards the third country and promises easily made in bilateral discussions between the outsider and individual member states, tend to count for little once the insiders meet collectively. Instead movement and concession is likely to be minimised, the onus for pushing the negotiation ahead falling mainly on the outside party.[[2]](#footnote-2) And this is all the more true when the third party is in the weaker bargaining position, seeking entry into the EU perhaps, or trying to secure a deal that it needs more than the Union does.

 The United Kingdom ought though to have started the Brexit negotiations with the EU with one distinct advantage, namely a good knowledge of the system. As an insider of forty years standing, a member state whose politicians and officials had played important roles in shaping and steering the very entity that Britain was now trying to leave, the UK should have had a deep understanding of the EU, and therefore a good ability to anticipate how the negotiations would unfold. This should in other words have been one of those divorce disputes where each party knew every foible of their former partner, could anticipate most of their moves, and was acutely aware of what the vulnerabilities and strengths of their position were likely to be.

 Bizarrely however this has not proven to be the case at all. Rather than making full use of their inside knowledge, their intimate acquaintance with the EU to pitch their case in the most skilful fashion possible, the British have instead blundered through much of the Brexit negotiation as if dealing with the EU for the very first time. In the process they have thus highlighted how superficial has been the understanding of the system acquired by much of the UK political class during the four decades spent inside the system. The botched job of leaving, to put it slightly differently, has cast into sharp relief the fragile, tendentious, and highly limited comprehension of how the EC/EU works that has been the hallmark of the British political class perhaps ever since 1973. It will be in the manner of its departure, that the UK will do most to show how incomplete had been its political and cultural integration into the system throughout its four and a half decades of membership.

 This is not of course to say that absolutely no one in Britain understood the EU. There have always been a few true insiders – ministers, officials and diplomats - who, through long experience of working with and in Brussels have understood how the EC/EU worked. There have been a handful of journalists too, although largely confined in recent times to one or two titles, most obviously the *Financial Times*.[[3]](#footnote-3) And there have been a smattering of good academic specialists. Much of the ground work for what became the discipline of European studies emerged in British universities, for instance, and UK based specialists have also been prominent in the historiography of European integration history.[[4]](#footnote-4) But none of those who did know how the system functioned have ever really been able to transfer their knowledge and insight into the wider British public, or even the political elite, in a way that would have gradually made such knowledge mainstream. Instead, the highly polarised internal debate about ‘Europe’ has meant that such expert views have tended to be seen as contentious statements of ‘opinion’, to be debated and challenged rather than taken on board, promulgated by suspect figures who may or may not ‘have gone native’ – i.e. become too European to remain properly British. Lord Cockfield, for instance, one of the most successful British Commissioners and someone who as a good lawyer had actually read the Treaty of Rome on taking up his new post in 1985 and sought to impart his insights about the system to former government colleagues, gradually saw his access and credibility with Margaret Thatcher and the Conservative party dwindle as he became ever more seen as ‘one of them’ rather than ‘one of us’.[[5]](#footnote-5) As a result, the British debate about Europe during its many years within the EC/EU, and more recently during the referendum campaign and the Brexit talks themselves, has been characterised by a startlingly poor understanding of the system and willingness to give space and time to misconceptions that ought quickly to have been dismissed.

 The first widespread mistake that has bedevilled both the referendum campaign and the subsequent negotiations has been the failure to realise that the European Single Market is much more than just a free trade area – and that therefore tariff free access to the EU will not, in and of itself, give British exporters anything comparable to the access that they currently have. In the midst of the referendum campaign, Michael Gove for instance sought to rebut alarmist predictions about the economic harm to British exporters that might be done by a vote to leave by pointing out that:

*There is a free trade zone stretching from Iceland to Turkey that all European nations have access to, regardless of whether they are in or out of the euro or EU. After we vote to leave we will stay in this zone. The suggestion that Bosnia, Serbia, Albania and the Ukraine would stay part of this free trade area – and Britain would be on the outside with just Belarus – is as credible as Jean-Claude Juncker joining UKIP.[[6]](#footnote-6)*

Britain in other words would go on enjoying tariff free access to EU markets, irrespective of the outcome of the referendum. But as Gove almost certainly knew the focus on tariffs was quaintly anachronistic, a throw back to the early years of the integration process, rather than a point of great relevance in 2016. This is because ever since the 1980s the main target of European liberalisation efforts have not been intra-European tariffs – which had been largely eliminated in the 1960s – but instead the various regulatory and administrative obstacles that clogged up trade across European borders – the so-called ‘non-tariff barriers’. It was the elimination of these last that had been at the core of the Single Market programme between 1985 and 1992 – an effort masterminded by Lord Cockfield and strongly backed by Mrs Thatcher – and it was therefore the degree to which Britain maintained regulatory convergence with the EU that would do most to determine the country’s commercial access after Brexit rather than the question of tariff levels.[[7]](#footnote-7) The prospect of pan-European free trade was therefore of little assistance to any would-be exporter to the EU, as useful as an umbrella offered to someone alarmed by rising flood water. But remarkably – and revealingly – hardly anyone in either the press or even the Remain campaign took Gove to task for this misleading claim. A few experts objected – I wrote an indignant blog piece[[8]](#footnote-8) – but the vast majority of journalists and commentators seem to have regarded Gove’s statement as a relevant and legitimate point. And this misguided fixation on tariff reduction or elimination rather than regulatory alignment continued within the British debate in the early stages of the Brexit talks themselves, hence in part the brief flurry of excitement over Liam Fox’s suggestion that post-Brexit Britain might join the East Asian CPTPP.[[9]](#footnote-9) It is only within the last year or so that the better portions of the press have begun systematically to seek to explain to their readers the differences between a free trade area, a customs union, and a single market, not to mention assorted new Brexit-induced variations like a customs partnership and maximum facilitation – and in the process, one can’t help suspecting, have begun to fully understand these distinctions themselves. The British debate about what underpins its trade with the EU – and hence about what will change as Britain leaves the single market – has thus been characterised by a strikingly fragile awareness of how the EU’s internal market operates, despite the key historical role that the country played in pushing for and creating this very market. We have forgotten – or unlearnt – what we once energetically championed.

 A second feature of the EU that we ought to have known about but have blithely failed to think through is the importance of timetables. European integration history is studded with the use of timetables and deadlines designed to compel member states to respect the obligations they have entered into and to bring about more or less simultaneously the administrative, commercial and legal changes that they have agreed to make. A set of fixed dates for tariff dismantlement stood at the heart of the original 1957 Treaty of Rome; much of the 1960s was dominated by an arm wrestle between France and its partners over the schedule for establishing a working Common Agricultural Policy; a similar timetable lay at the heart of the establishment of the Common Fisheries Policy in the 1970s; and the technique was famously reprised both in the 1980s and early 1990s with the building of the Single Market and in the 1990s and the first years of this century with the establishment of the Single Currency.[[10]](#footnote-10) As seasoned insiders, the British ought therefore to have taken seriously the two year timetable set out by article 50, the Treaty of Lisbon provision by which the country sought to leave the EU. In so doing they should have realised a) that two years was a very short period of time to work out even the immediate modalities of extricating a longstanding member state from the EU, let alone deciding upon the longer term relationship between Britain and Europe, and b) that one of Britain’s strongest weapons in the forthcoming negotiations was the fact that it alone would determine when to invoke article 50 and hence to start the clock ticking. The sensible course would therefore have been to go as far as possible in determining what Britain wanted to get out of the negotiations as well as what was likely to be negotiable from an EU perspective, before allowing the countdown to begin. Instead Theresa May invoked article 50 in March 2017 well before any clarity existed in the British debate about either point, and has been under severe timetable pressure ever since. By failing to think through the consequences of the article 50 timetable, the UK has thus seriously weakened its bargaining position.

 Another avoidable error has been to underestimate the degree to which Ireland’s delicate and sensitive position with regard to the consequences of Brexit would become a central concern for the whole EU. The British have been generally very slow to realise the potential importance of this 21st century manifestation of the Irish Question and even slower to anticipate how seriously this would be taken by the 27 as a whole, and not just the Dublin government. But in so doing they have again been guilty of overlooking two further realities about the EU that should have been more widely recognised in a member state of long standing. The first is the fact that the EU has always been prone to support an insider in a tussle with an outsider almost irrespective of the merits of the insider’s case. A good example of this would be the way in which nobody within the EU sought to undermine Greece’s obstinate refusal to accept the preferred name of the Former Yugoslav Republic of Macedonia despite the fact that the vast majority of observers in Brussels, Paris, Berlin or London believed that Athens was being ridiculously over-sensitive about the consequences of allowing the country to assume the name of Macedonia.[[11]](#footnote-11) Strong support from the 26 for Ireland’s much more reasonable anxieties about a hard border on the island of Ireland was hence always a near certainty. And this is all the more so, to move onto the second factor overlooked within the British debate, given the way in which many of Ireland’s fears centred on the damage that a return to border controls in Ireland might do to the Good Friday Agreement, thereby undermining the EU’s own self-perception as a peace project. The EU has long liked to believe that it had played a useful role in overcoming the Northern Irish ‘troubles’ – and had been encouraged to think of itself in those terms by the governments of both John Major and Tony Blair as they sought EU money for the region – and hence its dismay at any backwards step in the peace process and its readiness to back Dublin in its efforts to safeguard the progress made should have been easy to anticipate.[[12]](#footnote-12) Instead there has been general perplexity in much of the British debate during the negotiations about why the EU was seemingly putting the interests of a single small member state above the bloc’s economic and political interest in a rapid settlement with the UK.

 A fourth lesson not learnt from Britain’s lengthy experience of dealing with the EU is about the limitations of bilateralism when dealing with a multi-national entity like the EU. It is of course true that regular encounters with individual government counterparts is a tried and tested way of preparing for internal EU negotiations. This has been a method effectively employed by every single holder of the EC/EU’s rotating presidency over the decades, as well as by successive Commission Presidents and more recently Presidents of the European Council.[[13]](#footnote-13) Such face-to-face encounters allow difficulties ahead to be identified and potential compromises pinpointed well before the multilateral discussions begin. But such one-to-one dealings can rarely, if ever, be used to pre-empt collective discussions and decision-making, or to sew things up in advance so that what happens when all of the leaders or ministers gather is no more than a formality. And yet the British have persisted in acting as if all that really needs to be done in order to ensure that an advantageous Brexit deal can be secured is to square Germany and perhaps France, and the rest will all follow. Over-focusing on Merkel to the near exclusion of everyone else who mattered at European Council level was one of the many errors committed by David Cameron in the course of the renegotiation attempt prior to the 2016 referendum.[[14]](#footnote-14) But rather than learning from this mistake and attempting to spread UK efforts more widely, May’s government has again directed a disproportionate amount of time and attention towards France and Germany in the apparent belief that once won over to Britain’s side, Europe’s two most powerful states will be able to push the others in the direction that has been decided by the big three. And yet this is seldom how the EC/EU has worked. Even at the apogee of Franco-German power in the late 1980s and early 1990s the two countries were rarely able to impose their views on others, but instead had to work hard to coax and cajole others into taking their side. Indeed the very effectiveness of the Franco-German axis centred on each country’s ability to persuade others that their efforts were being made in the interests of all, and to encourage multiple smaller allies and the Community/Union institutions into sharing their viewpoint. On those occasions by contrast where the smaller member states felt that they had been presented with a *fait accompli*, or a big country stitch up, resentment flared and agreement was delayed rather than promoted. All of which means that the chances of any package cooked up solely between the two largest remaining EU member states and a departing Britain being accepted and welcomed by the rest of the Union are truly slim. And yet without unanimity amongst the 27 no deal can be done. The beguiling mirage of a deal struck merely with the one or two states ‘that really matter’ floated above many UK discussions of the path ahead for far too long during the Brexit talks.

 Finally, and perhaps most fundamentally, the British debate about what is likely to prove negotiable has failed time and time again to take properly into account the political nature of the entity with which it is dealing, and the fact that it is the UK and not the EU that is asking for change. The first of these realities is perhaps best illustrated with what might be called the Boris Johnson ‘Prosecco’ argument – or the idea that the strength of Britain’s bargaining position in the negotiations springs from the commercial interest of many continental exporters in keeping access to the valuable UK market.[[15]](#footnote-15) This is a notion that has been repeatedly aired both during the referendum campaign itself and in the course of the Brexit talks. Unfortunately however it overlooks the extent to which virtually all of those with whom the British are negotiating regard a united and flourishing EU as even more valuable than the British market, whether economically or politically. And yet giving UK the sort of exit terms which many Brexiteers seemed to regard as likely so as to avoid the loss of sales to Britain, would be seriously to endanger EU unity and to incentivise others to follow the UK’s example and seek to leave, or renegotiate their EU membership. The potential negative consequences of this would, politically and economically, far outweigh the loss of the British market, however prized. This helps explain why the 27 opted immediately after the referendum result for a negotiating procedure which, by delegating the talks to a European Commission negotiator, operating under tight and strict European Council oversight, and ruling out direct negotiations with Theresa May at European Council meetings, maximised the likelihood of their staying united and minimised the scope for the British to seek to divide and rule. The 27’s whole approach to the talks, in other words, underlined how the politics of staying together trumped the potential value of trade with Britain. Furthermore, the underlying dynamics of the negotiation were always going to be profoundly asymmetrical, not just because it pitted 27 against one, but more importantly because the EU could unite in the defence of a pre-agreed system – the *acquis communautaire* and the principles on which the EU is based – whereas the British had to devise its desiderata from scratch. Mapping out what alternative commercial and political future Britain desired would always have been a challenging and time-consuming task, not least because those who campaigned for Leave held markedly divergent views on the question; it has been even more so in a deeply polarised country, still traumatised by the referendum itself, and led since 2017 by a minority and profoundly split government.

 Here too, though, an extraordinary number of those commenting on the negotiations failed totally to anticipate this reality and hence to prepare for it. An interview given to the BBC by the former Governor of the Bank of England Mervyn King illustrated this point well, since while his main intent was to criticise May’s performance and to lament the way in which the negotiations had been conducted, he sought to add emphasis to his critique by highlighting how tilted in Britain’s favour he believed the initial playing field to have been.

*Put yourself in the position of someone in Brussels on the morning after the British referendum. They must have been really worried that they had 27 countries to try to corral, how could they have a united negotiating position, they were dealing with a country that was one country that had made a clear decision, had voted to leave, it knew what it wanted to do, how on earth could the European Union manage to negotiate against this one decisive group on the other side of the channel? Well the reality has been completely the opposite. The European Union has been united, it has been clear, it has been patient and it is the UK that has been divided, without any clear strategy at all.[[16]](#footnote-16)*

This should not have been at all surprising however since, as argued at the very start of this piece, uniting around a pre-agreed position, and maximising internal coherence even at the expense of external rigidity, has been the EC/EU’s default approach to negotiation ever since it was first created. The Community had behaved thus when Britain first applied, obliging the then British government to learn, painfully and slowly that it was they and not the Six who would have to make the bulk of the concessions.[[17]](#footnote-17) It has behaved in similar fashion in countless negotiations during the time when the British had been part of the system.[[18]](#footnote-18) And yet once outside (or at least on their way out and treated as already having left in terms of how the Brexit talks have been organised) the British have reacted in horror and surprise at this deep-rooted – and hence entirely predictable - characteristic.

All told, therefore, the manner in which the British have allowed themselves to be taken aback by the realities of negotiating with the EU says much more about our own shallow understanding of the system than it does about European vindictiveness or spite. A tiny of minority of UK officials and politicians did correctly predict the likely course of negotiations from the outset – most famously Ivan Rogers who resigned precisely because most of his political masters did not want to hear the message he was conveying.[[19]](#footnote-19) Others, like Olly Robbins appear to have gone through the disconcerting and uncomfortable process of learning on the job.[[20]](#footnote-20) But even those who have gradually discerned more clearly the profoundly uneven nature of the playing field have struggled to defend the UK concessions that they have belatedly realised are needed, in the face of many amongst the political elite, the press and the general public who remain as profoundly ill-informed, not to say deluded, about the nature of the EU as ever. What this means for the eventual outcome of the negotiations will be clearer once this piece appears than it is at the time of writing. One lesson, however, is already wholly apparent. We have been ‘in Europe’ for over four decades, but as the whole depressing spectacle of the Brexit talks amply demonstrate, few of us have ever really understood what this means.

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1. Thomas W Zeiler, *American Trade and Power in the 1960’s* (New York: Columbia University Press, 1992); Con O’Neill, *Britain’s Entry into the European Community: Report by Sir Con O’Neill on the Negotiations of 1970-1972*, Foreign and Commonwealth Office (FCO) Publications (London: Whitehall History Publishing in association with Frank Cass, 2000). [↑](#footnote-ref-1)
2. This was the core argument of my first book: N. Piers Ludlow, *Dealing with Britain: The Six and the First UK Application to the EEC*, Cambridge Studies in International Relations 56 (Cambridge: Cambridge University Press, 1997). [↑](#footnote-ref-2)
3. Martin Herzer successfully demonstrates that some of the British press was deeply involved in what he terms the rise of a largely pro-European ‘Euro-journalism’. Martin Herzer, ‘The Rise of Euro-Journalism: The Media and the European Communities, 1950s-1970s’ (PhD, European University Institute, 2017). But the character of British coverage changed radically from the early 1980s onwards, becoming much more sceptical. Oliver Daddow, ‘The UK Media and “Europe”: From Permissive Consensus to Destructive Dissent’, *International Affairs* 88, no. 6 (1 November 2012): 1219–36, https://doi.org/10.1111/j.1468-2346.2012.01129.x. [↑](#footnote-ref-3)
4. None more so than the controversial figure of Alan S. Milward. To understand his impact see Wolfram Kaiser and Antonio Varsori, eds., *European Union History: Themes and Debates* (Basingstoke: Palgrave Macmillan, 2010), 85–108. [↑](#footnote-ref-4)
5. Testimonies given at ‘The Delors experience revisited: Building Europe’s single market with Lord Cockfield in the 1980s’, The European Union in Practice seminar, LSE, 23 February, 2018 [↑](#footnote-ref-5)
6. <http://www.conservativehome.com/parliament/2016/04/goves-eu-speech-key-extracts.html> (accessed 12.11.2018) [↑](#footnote-ref-6)
7. For the making of the Single Market see Nicolas Jabko, *Playing the Market: A Political Strategy for Uniting Europe, 1985-2005* (Ithaca: Cornell University Press, 2006). [↑](#footnote-ref-7)
8. <http://blogs.lse.ac.uk/brexit/2016/04/21/michael-goves-problem-is-that-a-single-market-is-more-than-just-a-tariff-free-zone/> (last accessed 12.11.2018) [↑](#footnote-ref-8)
9. <https://www.gov.uk/government/news/japan-will-spare-no-effort-to-support-the-uk-in-joining-the-cptpp> (last accessed 12.11.2018) [↑](#footnote-ref-9)
10. Mark Gilbert, *European Integration: A Concise History* (Lanham, Md.: Rowman & Littlefield Publishers, 2012). [↑](#footnote-ref-10)
11. For press coverage of the end of the dispute, see ‘Macedonia changes its name ending bitter dispute with Greece’, *The Guardian,* 17.6.2018 <https://www.theguardian.com/world/2018/jun/17/macedonia-greece-dispute-name-accord-prespa> (last accessed 12.11.2018) [↑](#footnote-ref-11)
12. For a discussion of the EU role in the peace process, including the gratitude shown by Major and Blair, see N. Piers Ludlow, ‘The PEACE programme in Northern Ireland’ in Vincent Dujardin et al, *The European Commission 1986-2000: Histories and Memories of an Institution* (Luxembourg: European Commission, 2019 forthcoming) [↑](#footnote-ref-12)
13. The many bilaterals conducted by Roy Jenkins as President of the Commission feature prominently in N. Piers Ludlow, *Roy Jenkins and the European Commission Presidency 1976-1980: At the Heart of Europe.* (Basingstoke: Palgrave Macmillan, 2016). [↑](#footnote-ref-13)
14. ‘How David Cameron lose his battle for Britain’, *Financial Times*, 18.12.2016 <https://www.ft.com/content/3482b434-c37d-11e6-81c2-f57d90f6741a> [↑](#footnote-ref-14)
15. For the source of the name, see ‘Boris Johnson attacked over ‘Prosecco Insult’’, BBC, 16.11.2016, <https://www.bbc.co.uk/news/uk-37995606> (last accessed 12.11.2018) [↑](#footnote-ref-15)
16. Mervyn King on *Today*, 5.9.2018 [↑](#footnote-ref-16)
17. <http://blogs.lse.ac.uk/brexit/2017/11/09/swallow-the-lot-and-swallow-it-now-britain-is-and-was-deluded-about-its-negotiating-power-with-the-eu/> [↑](#footnote-ref-17)
18. For an overview of multiple enlargement negotiations where this characteristic has been much in evidence, see Aurélie Andry, Rebekka Byberg, and Haakon A. Ikonomou, eds., *European Enlargement across Rounds and beyond Borders* (Abingdon: Routledge, 2017). [↑](#footnote-ref-18)
19. ‘Ivan Rogers’ letter to staff in full’, *BBC*, 4.1.2017, <https://www.bbc.co.uk/news/uk-politics-38503504> (last accessed 12.11.2018) [↑](#footnote-ref-19)
20. ‘Meet Britain’s real Brexit broker’, *Financial Times,* 10.10.2018, <https://www.ft.com/content/a7298efa-cc1c-11e8-b276-b9069bde0956> (last accessed 12.11.2018) [↑](#footnote-ref-20)