

# The Brexit talks aren't just about power, they're about legitimacy – and the UK urgently needs a vision for the future



Coverage of the Brexit negotiations often focuses on the relative bargaining power of the UK and the EU as they seek to reach a new agreement following Britain's withdrawal. **Andrew Glencross** highlights that although bargaining power is central to the negotiations, power is a function of legitimacy, and if the UK is to reach a genuinely good Brexit deal it will have to propose a new institutional vision that the rest of the EU recognise as being legitimate.



Theresa May delivering a speech in January 2017 outlining 12 objectives for Brexit, Credit: [Number 10/Jay Allen](#) (Crown Copyright)

Brexit is the most divisive issue in UK politics for generations. But one thing all commentators agree on is that the ongoing talks over exiting the EU are a test of bargaining power. Yet power is a function of legitimacy, as Henry Kissinger observed in [A World Restored](#), his masterly survey of 19th century European diplomacy. The settlement that shaped European politics for the rest of the century emerged from an agreement over the legitimacy of major states' interests, not a bargaining free-for-all determined by power politics.

Kissinger's diplomats would have seen Brexit instantly for what it really is: a revolutionary act that rejects the very legitimacy of the existing EU order. British politicians and voters of all stripes need to appreciate this dimension of the withdrawal negotiations. Until then, they will continue to misread the situation and think the EU27 is bargaining over interests. In fact, it's defending its principles. The UK must eventually propose a new institutional order – rather than a [wishlist](#) of the interests it wants to protect, from trade to immigration.

The government has taken so long to reveal its blueprint for [Brexit](#) because of the lack of clarity over what the 2016 referendum result really meant. The snap election in June ought to have ended the uncertainty, but failed spectacularly to do so. The Conservatives and Labour did their utmost to avoid discussing their vision of Brexit in the campaign. Both parties are now hopelessly split over whether to pursue a hard or soft break with the EU.

However, the hard/soft distinction is itself a British self-indulgence. For the EU, Brexit is first and foremost a matter of principle, not a wrangle over what form it takes. Whereas the UK faces a domestic legitimacy problem over the type of trade-offs it should pursue, the EU has to defend the legitimacy of its entire institutional order.

A legitimate international order is not something that is set in stone. Adjustment and transformation is possible, Kissinger explains, providing there is consensus on the nature of a “just arrangement”. The problem here is that the UK has a long record of unilaterally challenging the European consensus on what is considered just.

Prior to its [1975 referendum](#) on remaining as a member of the European Economic Community, the UK renegotiated the terms of its relationship. Then, in 1984, [Margaret Thatcher](#) secured a permanent budget rebate for the UK's contributions to the European budget. Finally, before holding the 2016 referendum, David Cameron secured his own [special deal](#) on various EU rules, in the hope of convincing the UK public to vote to remain.

### What's the vision?

Negotiating a future UK-EU relationship is fundamentally different from the bargaining over interests that characterised these previous spats. In these earlier episodes, the British government voluntarily agreed to limit the scope of conflict, thereby avoiding questioning the whole institutional edifice and its legal foundations.

Most toxic of all is the memory of the budget dispute in Thatcher's time. Thatcher's stubbornness has become an inspiration for today's hardline Brexiteers, who conveniently ignore the compromises she made at the time. Thatcher didn't simply reject the suggestion – promoted by the anti-EEC Labour opposition – of suspending UK financial contributions to Brussels. Her government took the lead in relaunching the EEC by proposing the completion of the single market. There was also a diplomatic pledge to accept the process of establishing a European Union. Other countries thus understood that British demands were limited.

By contrast, Brexit involves tearing up the existing treaties and questioning the UK's legal obligations wholesale. Everything is up for negotiation, which precisely matches Kissinger's definition of a revolutionary order as one that “identifies the legitimate with the possible”. The UK's demands and methods for obtaining a new relationship are fundamentally unilateral, otherwise known as [the “have cake and eat” it approach](#).

It's hard for diplomacy to function in such circumstances. That's why the [formal talks](#) that have been continuing all summer are inherently unstable. Legitimacy is a power multiplier for the EU. A shared acceptance of the current EU system is the foundation of the mandate given to Michel Barnier, the EU's [Brexit negotiator](#). Whatever their disagreements over the exact terms of a future deal with the UK, the EU27 can agree that invoking Article 50 is not the proper way to adjust the terms of EU membership.

Consequently, the UK government needs to match the EU by thinking in terms of order and not revolution. So far, ministers have chosen to moot endless possibilities for the post-Brexit future. Instead, there must be an actual proposal for a replacement institutional arrangement. This should specify the nature of obligations between the UK and the EU as well as the mechanism for reconciling differences in interpretation or policy. That is the only way to limit the scope of future disputes about individual issues.

In the absence of such a structure, there can be little hope of a lasting and stable settlement. And ultimately, that's what matters most for both parties. Bargaining can create a new order in the aftermath of a revolution, but, as Kissinger's analysis of European history shows, only legitimacy can sustain it.

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